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ANCIENT

CRIMINAL TRIALS

IN SCOTLAND.

VOL. III.—PART II.

1615—1624.

ANCIENT

CRIMINAL TRIALS

IN SCOTLAND;

COMPILED

FROM THE ORIGINAL RECORDS AND MSS.,

WITH HISTORICAL ILLUSTRATIONS, &c.

BY

ROBERT PITCAIRN, ESQ.

VOL. III.

PART SECOND.

EDINBURGH:
PRINTED FOR THE BANNATYNE CLUB.
M.DCCC.XXXIII.

Treasonable Fire-raising in Coal-pits.

Jun. 10.—Johnne Henrie in Littill Fauſide.

Dilaitit, accuſet, and perſewet, be Sir Williame Oliphant of Newtoun, kny^t^, Aduocat to our ſouerane lord, for his hienes intereis, of the crymes vnderwrittin, viz.

Forsamekill as, albeit be the 146 Act of our Souerane lordis tuelf Parliament, haldin at Ed^r^ vpone the fyft day of Junij, 1592 ȝeiris, makand mentioun that his Maieſtie and eſtaittis, for þe better pwneiſchment of the wiked cryme of ſetting ffyre in coil-heuches[1] be ſum vngodlie perſones, vpon privat revenge and diſpyte, haif þairfoir Statute and Ordanit, be vertew of the ſaid Act of Parliament, that þe committing of the ſaid cryme, in ony tyme þaireftir, ſall be Treſſone; and that the committeris of þe ſaid haynous and deteſtable cryme, being ordourlie convict þairof, ſall ſuffer and vnderly ſic pwneiſchment in þair bodeyis, landis, and guidis, as is dew be the law in cauſes of Treſone: As in the ſaid Act of Parliament at lenth is contenit. Nochtwithſtanding quhairof, it is of verritie, that þe ſaid John Henrie, being a ſervand and workman within the Coil-heuch of Littill Fauſyde, and þairthrow beſt acquentit with the haill ſecreit paſſages and pairtis of the ſaid heuche, haiſing conſauet ane deidlie rancour and evill will aganis Mungo M^c^call, now of Littill Fauſyde, becaus þe ſaid Johnne had nocht that libertie and commandiment vnder him quhilk he had vnder Johnne Levingſtoun, his prediceſſour; in a devilliſch diſpyte, and to þe wrak and diſtructioun, nocht only of the ſaid Mungois coil-heuch, bot to þe grit preiudice of þe cuntrie and Cowmounwelthe, in the monethis of ffebruar, March, and Apryle, in the ȝeir of God I^m^.Vj^c^. and fourtene ȝeiris, at the leiſt, in ane or vther of the ſaidis monethis, immediatlie eftir þe ſaid Mungo M^c^call acquyret the rycht and poſſeſſioun of the ſaid coilheuch, come, vnder ſilence and clud of nycht, to þe ſaid Coilheuch of Littil Fauſyde, and enterit þairintill be ane previe hoill and paſſadge of his awin, and maiſt treſſonablie pat ffyre within the ſaid heuche, of purpois and intentioun to burne and diſtroy þe ſamyn and haill coillis being þairintill: Lyk as, for the gritter ſecrecie and doun-halding of the ſaid ffyre, he nychtlie, be þe ſpace of tuentie dayis togidder, reſoirtit to the ſaid heuche in ſecreit maner, ffed, and nureiſchet þe ſaid ffyre, ſtoppit þe haill air and vent hoillis with ſtray,[2] quhairthrow þe ſaid ffyre ſould nocht be diſcoverit: Be reaſone of the quhilk ffyre, and ſtopping of the haill air and vent hoillis, thair arraiſe ſic ane peſtiferous and foule air within the heuche, that nane of þe workmen war able to work þairintill; quhairvpone, and be þe pulling furth of ane bottell of ſtray furth of ane hoill in the ſaid heuche, quhilk hoill was callit þe ſaid Johnne Henreis vue,[3]

[1] Coal-pits. [2] Straw. [3] Perhaps for view, prospect.

the vehemencie of þe ſaid ffyre was diſcoverit. Be þe committing of þe quhilk deteſtable fact, he hes committed maiſt haynous and vnpardoneable Treſſone.

The pannell denyis the Dittay; and takis inſtrumentis that na pairtie inſiſtis in his perſute bot my lord Aduocat; and that thair is nocht ane ſuorne Dittay. My lord Aduocat producet Thomas Cochrane, his lordſchipis informer, quhais aithe he deſyret to be tane, anent the treuth of the Dittay.

Thomas Cocherane, greif[1] at Littill Fauſyde, being ſuorne vpone the verritie of the Dittay producet be my lord Aduocat, declairit that Johnne Henrie was giltie of þe cryme contenit þairintill, bot he wald nawayis follow nor perſew him for the ſamyn, in reſpect he had na intereis; quhairvpoun my lord Aduocat aſkit inſtrumentis.

The Aſſyſe being ſuorne, my lord Aduocat takis inſtrumentis of thair ſueiring; and proteſtis for Errour gif thay acquit.

VERDICT. The Aſſyſe, being ryplie and at lenth advyſet thairwith, togidder with the taikynis[2] and Depoſitiones producet for inſtructing thairof, be pluralitie of voitis, ffand, pronuncet, and declairit, be the mouthe of Alexander Penman in Lyttill Fauſyde, chanceller, the ſaid pannell, to be ffylet, culpable, and convict of the treſſonable cryme ſpecifeit in the ſaid Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair to be hangit vpone ane gibbet, quhill he be deid; and his heid thaireftir to be ſtrukin frome his body, and put vpone ane prik, fixt and ſet vp vpone the landis of Littill Fauſyde, beſyde the ſaid Coilheuche: And all his moveable guidis, gif he ony hes, to be eſcheit, &c.

Hamesucken—Slaughter.

Jun. 22.—ALEXANDER DAUIDSOUN, in Weſter Kerſe.

Dilaitit of the crewall and vnnaturall Slauchter of vmquhile George Suord, his ſone in law, be ſtreking of him with ane lance-ſtalff in the bellie, and gorring his puddingis, within the ſaid George awin duelling hous in Weſter Kerſe, vpone the xxix day of Maij laſt: Off the quhilk ſtraik he deceiſſit, vpone the tuelf day of Junij inſtant; committit vpone ſet purpois, prouiſioun, and foirthocht ffellonie, in hie and manifeſt contempt of his hienes authoritie and lawis.

PERSEWARIS, Patrik Suoird and Johnne Suoird, as brether.

VERDICT. The Aſſyſe, being ryplie and at lenth advyſet thairwith, togidder with the ſaid Alex^r his Judiciall Confeſſioun and acknowlegement of the ſaid haynous cryme to be of verritie, and his penitencie for the ſamyn, be pluralitie of voittis, ffand, pronuncet, and declairit the ſaid Alexander Dauidſoun to be ffylet, culpable, and convict of the ſaid crewall Slauchter.—SENTENCE. To be tane to the Caſtell-hill of Ed^r, and thair to be heidit; and his haill moveabill guidis to be eſcheit, &c.

[1] Grieve; overseer. [2] Proofs; *tokens;* evidence.

Mutilation and Demembration.

Jun. 30.—Johnne Pitscottie of Loncardie, Colene Pitſcottie, his eldeſt ſone.

Dilaitit of airt and pairt of the Mutilatioun of Margaret Stewart, ſpous to Thomas M^c^duff of Glenelwart, of hir richt airme; committit vpone the xxix day of Auguſt, 1613.

Perſewaris, Margaret Stewart, Thomas Duff of Glenelwart, hir ſpous.

The perſewaris paſſis fra the perſute of the pannell, for the crymes contenit in the Letteris, *pro loco et tempore*. Quhairupone the pannell aſkit inſtrumentis.

The Juſtice continued this caſe 'to the thrid day of the Air (of Perth) or ſoner, vpone xv dayis wairning.' Robert Creichtoun, brother to the Laird of Innernytie, became cautioner for their appearance, &c.

High Treason—Taking and Detaining the Castle of Dynnievaig—Resisting King's Lieutenant, &c.

[As the Editor has already entered so fully into the subject of the Rebellion in Ilay by *Sir James Maconeill*, &c., it is unnecessary to occupy further space here; more especially as *Mr Gregory's* Historical Researches, already far advanced, are exclusively devoted to the elucidation of such points.[1]

The following interesting memorials have been preserved by *Calderwood*, in his MS. Church History,[2] which the Editor believes will prove an acceptable illustration of this subject. They have been discovered since the former sheets were sent to press. 'Sir James M^c^konnell eſcaped out of *the Caſtle of Edinburgh*, where he had been wairdit the ſpace of eighteen years, upon the 24 of Maij, the day after *Angus Ooge*, his brother, and eight or nine of his complices, were brought to *Edinburgh*. It was thought that he eſcaped not without the privity of theſe who had credit. In the beginning of July, he entered in *Ila*, with a number of men of the Isles, and, within three or four dayes after his landing, took *the Caſtle*, flew *the Captain* and other three or four. His forces increaſing, he went out of and ſpoiled the lands belonging to *the Earl of Argyle*, compelled the tenants to pay him their maills and duties, and keeped about him five or ſix hundreth men. Upon the eight of July, *Angus Oge*, brother to *Sir James M^c^konnell*, and his complices, were hanged at the Market Croſs of Edinb^r^. They affirmed that *George Grahame* aſſured them, in *the Chancellours* and *Counſells* name, that they would procure the Kings favour and ſafety, both of their lives and lands, if they would render the pledges; and deſired them to keep the Houſe till *the King's* favour were obtained, or elis they had not made reſiſtance to *the King's Lieutennant*. Becauſe the ſaid *George* was not troubled by the Counſell or any other, the people thought hard of it.—Aug. 16. *The Earl of Argile* came to Edinburgh, ſent from Court be the King to paſſe upone *Sir James M^c^Konnell*. He had Commiſſione to warne and raiſe the Sherifdomes nixt adjacent, and to wage ſhouldiers, upon the King's charges. One of the King's Ships, and four pinnages, were ſent by Sea, with cannon, muſket, powder, bullet, picke, and corſlet. *The Counſell* gave their directione, upon the thrid of Auguſt. About the middeſt of September, their forces drawing near to others,[3] *Coline Campbell of Kilberrie*, and ſome with him, were ſurpriſed and taken be Coll Mackgileſpicke and his followers. *Mr Donald Campbell*, that Gentleman of *the Houſe of Caddell*, accompanied with ſix or ſeven hundreth men, went out of *Argiles* Campe, and ſurpriſed, in a ſuddane, *Col Mackgileſpick* and his companye; killed ſome, tooke others, and hanged ſome. *Col* him ſelf and the moſt part hardlie eſcaped. *Sir James*, and ſo many as might flie with him,

[1] See Vol. III. p. 1. [2] Advocates' Library. [3] Each other.

fled out of *Kintire* to ILA. All his followers could not flee, beaufe *Mr Donald Campbell* had ceafed (*seized*) upon many of the boats. *Argile*, finding it dangerous to remaine long in the ffeilds, winter drawing one, for it now was midd-October, and his company diffolving, practifed with *Mackgilefpicke*. *Col* rendered THE CASTLE OF DUNNIVEGE, *Coline Campbell of Kilberrie*, and himfelf to the Earle.'

A number of ORIGINAL PAPERS are appended to this Trial, which, in addition to those already furnished, afford ample and suitable illustrations of this remarkable passage of History. But for *Mr Gregory's* work, the Editor would have deemed it his duty to have made still further researches. To that gentleman's History, reference is made for the minuter particulars attending that subject, and, in general, for all other topics connected with the Feuds and Insurrections which took place in the Isles and West-Highlands.]

Jul. 3.—ANGUS OIG M^c^DONALD,[1] Allafter M^c^allafter, Angus M^c^allafter, Allafter M^c^arliche, Johnne M^c^condochie, Johnne Gair M^c^moylane.

Dilaitit of the treffonable taking, keiping, and detening of his Maiefteis Caftell of Donyvage, in Yla, and refifting of the Laird of Caddell, his hienes Leutennent and Commiffioner, &c.; as in THE DITTAY following:—FORSAMEKILL AS, thay, accumpaneit with *Coill M^c^gillefpick* and vperis, þair complices, all rebellis and brokin men,[2] to the number of ffyftie perfones or þairby, in the moneth of November laft, maift treffonabillie convocat thame felffis in airmes, come fordwardis in oppin and arrayit battell to his Maiefteis Caftell and ftrenth of Dynnievaig, in Yla; and þair, be craft and policie, tuik in the faid Caftell, whilk thay ftuffit[3] and furneiffit with mufcattis, hagbuttis, poulder, leid, and vþer weirlyk furnitour,[4] for halding þairof: Quhilkis treffonable practizes, fa interpryfet be thame and thair complices, being maid knawin to the Lordis of his Maiefteis Secreit Counfell; and thay, for redres of the faidis rebellis enormiteis, haifing directit the Laird of Caddell,[5] with companeis of wageit men of weir, as Leutennent to his Maieftie, with ane Herauld,[6] and trumpettar, to charge thame, in his hienes name and authoritie, to rander the faid Caftell, and to recover the famyn fyrth of þair handis. LYK AS, the faid Leutennent with his forces, togidder with the faid Herauld and trumpeter, haifing cum to the faid cuntrie of Ilay, to the effect foirfaid, the foirnamet perfones, with þair rebellious affociattis, vnderftanding þairof, directit furth ane grit number of þair rebellious cumpany aganis the faid Herauld and trumpeter, and maift treffonabillie ftayit and interruptit thame fra cuming fordwardis to þe faid Caftell, for geving of the faid charge; quhairthrow, for feir of þair lyfes, thay durft nocht cum fordwardis to the faid hous: Lyk as, eftir his Maiefteis Leutennent had plantit him felf with his forces round about the faid Caftell, and had falutet the faidis rebellis,

[1] See May 13, 1609, &c., and Note to the Introduction to *Sir James Makconeill's* Trial, Vol. III. p. 1, &c.—and Vol. I. p. 224, where the Trial of *Angus Makconeill*, his father, occurs. [2] Outlaws, and men attached to no particular Clan, who, for pay and the hope of plunder, would join in any enterprise. [3] Provisioned. [4] Furnishing; provision. [5] Campbell of Calder, or Caddell. [6] 'Robert Wynrahame, Albany (Ylay) Herauld.'

being þairin, with nyne ſcoir ſchottis of ordinance, ſchote be thame þairat, the ſaidis perſones on pannell, nochtwithſtanding of þe ſaid Aſſault maid be þe ſaid Lieutennent to þe ſaid Caſtell, maiſt treſſonablie held out, keipit and detenit þe ſamyn aganis him, he being cled with his Maieſteis authoritie, as Leutennent and Commiſſioner, for releiſing þairof; and treſſonabillie ſchote furth agane, out of þe ſaid Caſtell, at þe ſaid Leutennent and his companie dyuerſe ſchottis of muſcattis, and þairwith ſlew *Capitane Craufurd*, with foure vther of his Maieſteis faithfull ſervandis and ſubiectis, quha war in ſeruice with the ſaid Leutennent, in the executioun of his Commiſſioun. And the ſaidis perſones on pannell, and ilk ane of thame, ar airt and pairt of the ſaidis treſſonable crymes.

My Lord Aduocat producet the Dittay, with the roll of the Aſſyſe; and deſyret proces.

Assisa.

Mr Rannald Bayne, burges of Ed^r, Hucheoun Fraſer of Kilboig, James Sprewle of Cowden, Andro Meldrum of Dumbrek, Williame Cunningheam of Dolphingtoun.[1]

The Aduocat, for verificatioune of the Dittay, producet the pannellis Depopoſitiones, and takis inſtrumentis vpone the productioun thairof, &c. And proteſtis for Wilfull Errour, gif thay acquit.

Verdict. The Aſſyſe, all in ane voce, be the mouthe of the ſaid James Sprewle, chanceller, ffand, pronuncet, and declairit the ſaidis perſones on pannell, and ilk ane of thame, conforme to thair awin Depoſitionis, and approbatioun thairof in judgement, to be ffylet, culpable, and convict of airt and pairt of the haill treſſonable crymes contenit in the Dittay.—Sentence. To be tane to the Mercat-croce of Ed^r, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveable guidis to be eſcheit and inbrocht: And all thair landis, heritages, and annuelrentis pertening to thame, to be fforfaltit to his Maieſteis vſe, &c.

APPENDIX OF DOCUMENTS,

Illustrative of the Trial of Angus Oig McDonald, &c.

I. Offeris *to be preſentit to our maiſt gratious ſouerane and his hienes honorabill Counſall, in the name of Angus McDonald of Dwnavaig, his freindis and followeris.*

First, with all humelite, I adheir to my former Offeris, maid and ſubſcryuit with my hand, in preſens of the Counsall, at *Glaſco*, in the yeir of God I^m.Vj^c. and fyf yeir, and delyuerit to *my Lord of Skone* to haif bene ſchawin to his Maiestie; promeſing to performe euery heid of the ſamin.

Secondlie, I offer my ſelf to abyid the tryell of the lawis of this his Ma^tes realme, twiching my obediens to his hienes and *Conſallis* derectiones, in all poyntis; and keiping of all dewateis appertenyng to a loyall ſubiect, ewir ſen his M^tie paſt to mak reſidens within his hienes kingdom of Ingland.

[1] The remainder 'burgesses of Ed^r.'

Thridlie, ſeing I haif compleitlie payit all bygane males[1] of his hienes propper landis, within IYLA and KYNTYIR, poſeſſit be me, heirtofoir, and hes obtenit HIS MATES *Comtrollerris* diſcharge thairof, I offir, in lyk manir, in all tym cuming, during my lyftym, to mak thankfull payment of the full Rentall of the ſaidis landis, wnto the quhilkis I and my foirbeiris hes bene kyndlie tenentis;[2] and that termelé and yerlé,[3] wnder the pane of tynſall[4] of all kyndis of rycht, tytill, or poſſeſſioune that I can cleame to ony landis within ony pairt of HIS MATES dominionis; his hienes reſpecting for the preſent *the Waſt landis of* IYLA, quhill thai be pleneiſchit and manwrit.[5]

Ferdlé, I offir ſufficient cautioune, within *the Law-landis*, that I ſalbe obedient to the lawes of this HIS MTES cuntré of SCOTLAND; and to that effect, ſall compeir befoir *the Counſall* of the ſaid realme, vpone lauchfull premonitione, quhairfoewir the ſamin ſall fit.

Fyftlé, I offir to concur with thais quhomvnto it ſall ſeme guid to (his) hines to gif Commiſſioune, with my haill freindis and followaris, and to ſet fordwart and aſiſt ſic reformatioune of the barbarité of thir cuntreis of THE WAST and NORTH IYLES of this HIS MATIS kingdome of SCOTLAND, as it ſall pleas his hienes beſt to dewyſe, be thir preſentis, ſubſcryvith with my hand, AT KILNACHTANE, IN IYLA, the aucht of September, 1606. ANGUS M^cDONALL of Dwnevaig.

II. LETTER, *Angus M^cdonall of Dwnwaig to* THE KING. Sep. 10, 1606.

PLEIS ȝOUR EXCELLENT MATIE,

IT is knawin to ȝour MATEIS honorabill *Counſale*, within ȝour hienes realme of *North Britane*, quhat hes bene my behaviour evir ſen ȝour hienes paſt out of thir the North pairtis of ȝour MATEIS dominioun; how many ſuttis, and how mony offeris of all dewiteis that it become a loyall ſubiect to his dred ſouerane, I haif maid to þair Lo.; and how that, efter I haid fullilie ſatisfeit and compleitlie payit all byrun maillis addebtit be me to ȝour MATEIS *Comptroller*, I obtenit his diſcharge þairupoun. I ſend with his lo. to haif bene preſentit to ȝour MATIE certane ſpeciall OFFERTS, ſubſcryuit with my hand, befoir ȝour hienes COUNSALE in *Gleſgw*, in the moneth of Junij, 1605, of the quhilk I haif as ȝit receavit na anſuer nor[6] quhat ȝour MATIE reſoluis and derectis me to do; and being refuſit of Licence to haif cum and preſentit my ſelf perſonalie befoir ȝour hienes, to haif maid my awin ſupplicatioun out of my awin mowth, I am enforceit to mak the ſamyn be a mediat perſone, *my Lord Biſchop of the Iyles*,[7] quhome-by I haif gewin credeit to offer, in my name, to ȝour MATIE my lyfe and all þat I may command, to be vſit as it ſall pleiſe ȝour hienes direct; beſeiking ȝour MATIE, for the cauſe of God, to reſpect my aige and puir eſtait, and to lat me knaw ȝour hienes awin mynd, ſignet with ȝour MATEIS awin hand; and gif it mycht pleiſe ȝour MATIE to continew me the poſſeſſioun of thais kyndlie rowmes,[8] quhilkis my forbearis[9] and I hes haid of ȝour MATIE and ȝour hienes royall progenitouris, I ſall nocht onlie paye the dewiteis and maillis vſit and wount þairfoir, bot alſo ſall find ſufficient ſouertie for obedience to ȝour MATEIS lawis, in all poyntis, and in all tyme cuming; or vþirwayis, that it mycht ſeim guid to ȝour MATIE to let me kend,[10] how and quhairupoun I ſall leive; for it ſalbe knawin, I ſall ſeik na vther refuge bot onlie ȝour MATEIS clemencie, nor na vther leiving bot that quhilk of ȝour MATEIS princelie liberalitie it ſall pleis ȝour hines beſtow vpoun me; as at mair lenth the beirar will informe ȝour MATIE. And ſua, I beſeik God to bliſs ȝour hienes with a long and proſperous ring. ȝour Maties maiſt humbill and obedient ſubiect,

IYLAYE, the tent of September, 1606. ANGUS M^cDONALL of Dwnwaig.

[1] *Maills*, rents, feu-duties, &c. [2] Feudal Tenants, termed *kindly*, from the circumstance of their being *natives*, born on those lands which had been possessed by their ancestors for many generations. Such persons were seldom ejected, so long as they paid the almost nominal rents of those lands, which they were thus permitted to occupy by a sort of hereditary title, after the decease of the former tenant. They were styled *Nativi* in old Charters. [3] Termly and yearly. [4] Loss; forfeiture. [5] Stocked and manured. [6] Than. [7] ANDREW KNOX, of the family of Ramfurly, who had been Minister of Lochwinnoch and Paisley, was appointed Bishop of the Isles, Apr. 2, 1606, having been the first Protestant Bishop of that See. Reference may be made to the Trial of Sir James Mackoneill, *Appendix*. [8] Possessions held by him as '*kyndlie Tenant*.' [9] Ancestors. [10] Know; understand.

III. Letter, *the Privy Council to* the King. May 27, 1608.

Most sacred Souerane,

This beirar, *the Bifchope of the Ilis*, haueing the occafioun to repair to your Maieftie for fome materis concerning the feruice in the Ilis, We haif committit vnto him the relatioun vnto your facred Maiestie how far we haue procedit in that bufynes, and what courfe is tane for the furtherance and profequution of that feruice, vnto whofe fufficiencie remitting all thingis, We pray God to grant vnto your Maieftie, efter a long and happy reigne, eternall felicitie. From your Maiefteis burghe of Edinburghe, the 27 of May, 1608.

Your Maiefteis moft humble and obedient fubiectis and feruitouris,

Al. Cancell^s^. Abercorne. J. Balmerino^t^. D. Scone.
Bewly. Halyrudhous. Jo. Prestoun.

To the Kingis moft excellent Matie.

IV. Letter, *Lord Wchiltrie to* the King. May 27, 1608.

Most sacred and gratious Soueran,

I ressavid your Ma^teis^ Lettir, with *Alifter Ogis* Remiffioune, and falbe cairfull to gif vnto 3our Matie full contentment and fatisfactioune in everie particular of the Letter. I haif reteinit the Remiffioune in my handis, quhill I haiff ane certaintie of *Alifteris* conformitie; quhairin I expect to find him anfuerable, in fome meafour, to that great favour quhilk it hes plefit 3our Matie to beftow wpone him. In all wtheris 3our Ma^teis^ directionis, quhairin it fall pleis 3our facred Matie to burdene me, I fall haif ane fpeciall cair and regard to approve my felff worthie of that truft quhilk 3our hienes repofis in me; having na wthir thing 3it to acquyt 3our heines ineftimable favouris, bot ane hart difpofit, in all finceritie, to difcharge that dewtie quhilk 3our Matie expectis, and quhilk to my awin credit appertenis, and to facrifice my lyffe and all that I haiff, in the executioune of all 3our Ma^teis^ royall directionis. And fua, recommending 3our facred Matie, with 3our royall progenie, to the protectioune of God, I reft 3o^r^ Maties moift humbill and obedient feruitour,

Edinburgh, the xxvij of Maij, 1608. Al. Wcheltrie.

To the Kyngis moift excellent Matie.

V. 'Copy *of* the Lieutennentis Letter *to the Counfull, to be fend to Courte with Sir Alexander Hayis Letter, &c.*' Aug. 18, 1608.

Pleis 3our Lordschipis,

I causit wey oure ankeris and depairtit from Yla the 14 of this inftant, at efter none, and arryved at *Dowart*, in Mule, the 15 of the fame monethe; and that with gryte difficultie, in refpect of the greateft tempeft of wedder and contrarie tyddis, quhairby we wer put in great dangeir all pat nycht; quhairthrow I failit downe ane of the maftis of my awne fchippe. Att oure out-comeing from Yla, we mett *the Inglifhe gallay*, with ane vther fhipp, that caryis the munitioun and ordinance, the quhilk gallay, yf it haid not pleafit God to haif givin hir that luke[1] to anker in *the Sound of* Yla, fho conld not haif efchaipit faiff, in refpect of the gryte tyddis heir, and hid gait to pas throw, the quhilk fho appeiris to be verie vnmeit: And finding hir nawife fufficientlie furneift with victuall, to remane heir to avait on this fervice, yf it war bot for the fpace of aucht dayis; and not being certane of ony victuallis to come heir to furneifh hir, bot onlie, at my fpeciall requeift, *Sir Williame St Johnne*, his Maiesteis *Admirall* heir, hes tane vpoun him, out of his awne furnitour,[2] to fupplie hir with viveris, quhill bak adverteifment come from your ll.; and feing we have no fervice in thir *Ylandis* that fho is meit for, and knowing hir to be gryte expenffis to his M^tie^, vpoun the avifement with *the Admirall*

[1] Luck; good fortune. [2] Provision.

and remanent *Capitanes of* THE INGLISHE FLEITT, and especialie with him wha is present *Governour* of hir, wha be painfull experience knawis, and hes declairit to ws, how difficile it is to keepe hir saiff, vncassin away, lett bee to do ony good office with hir, I haif thocht good to crave your ll. aduise, quhidder sho salbe direct bak agane to ENGLAND, with all expedition, as we think all expedient—or yf sho sall be continewit heir—and to what vse, and how sho salbe furneist—for we knaw not. As to the ship caryare of the batterie and instrumentis appertening thairto, albeit we think not meit to keepe the ship heir, bot remit hir bak with the gallay, for hir better preservation, yit, for sundrie cauffis tending to the forder and finall ending of this service, we think it expedient to keep the munition with the instrumentis, the quhilk I sall sie to be put in sic suritie, as I salbe answerable to HIS MAᵀᴵᴱ and your ll.

Thir thingis I haif thoght good to commvnicat vnto ȝour ll., imparting vnto ȝowr ll. oure opinioun heir, and craving your ll. for resolutioun in the premisses, quhilk I think, God willing, to follow furth. Vpoun the 16 of this instant, I directit Commissionaris to *the House of Dowart*, quhairin MᶜCLAYNE haueing his residence for the tyme, promesit to delyuer the House; the quhilk he did vpoun the 17 of this instant. I reffaveing the same, hes furneist with men and viveris that House to be keipit during HIS MAᵀᴱᴵˢ and ȝour ll. pleasour. I haif proclamit Courte to be haldin, the xxiij of this instant, in *Arrose of* MULL, when I think, be Godis grace, to tak ordour with þat Yland, in executioun of þat pairt of my Commissioun, in distroying of lumfaddis,[1] birlingis,[2] and Hieland gallayis.

I find this ane gryte difficultye, that in respect of the great nomber of theis vashellis, quhilkis ar intertenyit vpoun the mayne-shoir, quhilkis ar so offensive to *the Yllismen*, that onles thay keepe the lyk counter with þame, thay can not eschaip thair oppressioun, nather can I justlie spoilȝie þame þairof, vnles the lyk ordour be tane with these that ar vpoun the mayne-shoir, opposith to THE NORTH and WEST YLLIS; and thairfoir, yf it wald pleis ȝour ll. to gif me lyk pouer and Commissioun, for the aboleishing of sic vaschellis vpoun the mayne-shoir, as I haue with in THE YLLIS, I sall do accordinglie with boith. The quhilk Commissioun I expect, with diligence; into the quhilk Commissionn, I wald desyre your ll. to include the intaking and assedgeing and dimoleisheing of all sic Houssis vpoun the mayne-schoir, apperteneing to ony Yllisman, or that may be ayd or ressett to ony fugitiue rebell out of THE YLLES.

I will not trouble ȝour ll. with farder Letteris quhill mair occasioun be offerit; bot, requeisting ȝour ll. to haist bak ansuer, becaus I can not depairt out of this Yll, withoute ressett of the same, I rest,

Be ȝour ll. alwise to be commandit,

DOWART, in Mull, 18 August, 1608. A. VCHILTRIE.

VI. LETTER, *the Privy Council to* THE KING. Oct. 6, 1608.

MOST SACRED SOUERAYNE,

THIS Nobleman, the Lord Vchiltrie, whome it pleasit your heynes to prefer to the charge of Leutennandrie of THE YLLIS of this your Maiesteis kingdome, hes, with verie greate cair, pane, and travellis, and with greate hasaird of his persone, broght that seruice to ane goode perfectioun, by the entrie and exhibitioun besoir ws of a noumer of the principallis and Chiftanes of THE YLLES; and by his awne promeis and Band, to mak some otheris of thame, whome he hes not presentit, ansuerable and obedyent; as mair particularlie he will informe your sacred MAᵀᴵᴱ. And sua, recommending him to your Maiesteis gratious regaird and consideratioun, We pray God to blisse your sacred Maiestie with all happynes, restis for evir,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELLᴿ. ARGYLL. CRAFORD. BUKCLUGHE. ABERCORNE. BLANTYRE.

EDINBURGH, 6 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

[1] Lymphads. [2] A *birlin* is a small sort of vessel, peculiar to the Western Islands of Scotland.

VII. Letter, *the Privy Council to* the King. Oct. 13, 1608.

Most sacred Souerane,

The beirar, *the Bischop of the Yllis*, having the occasioun to repair towardis your sacred Maiestie, we haif thoght meit to accompany him with this our testimonie and approbatioun of his dewtiful cariage and behaviour in your Maiesteis seruice, in the Yllis, wherin he hes caryed him selff with verie goode credite and reputatioun; and is able, be his counsall and advyse, (in respect of his awne credite and freindshippe amang the Yllismen,) to do vnto your Maiestie goode seruice thair. And sua, recommending him vnto 3our sacred Maiestie, and most huimelie beseiking your heynes to heir him, in suche thingis as he will propone, anent the prosequtioun of this seruice, We pray God to blisse your sacred Maiestie with all happynes and felicitie, and restis for ever,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

Al. Cancells. Ross. Torphechin. Bukclughe. Halyrudhous.
Cls. Regri. A. Elphinston. S. T. Hamilton. Jo. Prestoun.

Edinburgh, 13 October, 1608.

To the Kingis most excellent Maiestie.

VIII. The Copie Angus Oge's *first* Letter *to Sir Oliver Lambert.* (No date.)

My honorabill good Lord,

I have receavet your Letter, and hes vnderstand be 3our meaning, that 3e wuld hawe me to rander this Hous to yow into the Kyngs name. My Lord, as to that, if I had not receavit ane better Warrand frome *my Lord Chancler* and *Counsell of Scotland* to rander thame this Hous of Dunywege, I wald obey your lo. or any wþer subiect, hawing his Maiesteis Warrand. My lord, if 3e doubt of this, send me 3our awin Secretar, or anie wþer þat can reid, and I shall let him sie my Warrand frome *the Counsell*, desyring me to keip this *Castell*, wnto the tyme that his Matie wilbe[1] declairit to me. The quhilk my Warrand sall testefie. And if yow will trouble me, efter I hawe obeyit his highnes will, be yow assurit that I sall complayne to his Maties *Counsell*. Not troubling 3our lo. any forder, comitts yow to God. Frome Dunywege, the 14 of this instant month. And if 3e will send any of 3onr awin men, 3e sall hawe frie passage to pas and repas to and fro.

Your friend, to your deserwing, Angus Og Macdonall.

IX. Extract *from* Minutes *of Privy Council Proceedings.* Apr. 1614.

The House of Dvnyveg, in Yla, being possessed and keeped be the Bischop of the Yles his brother, and two or three servandes, the same House hes bene of late surprysed and tane be one *Ronnald Oig*, alegeand to be Bastard sone to vmqle *Angus Mcconeill of Dvnyveg*, whom the said *Angus* did neuer, in his tyme, acknowlege to be his sone. This *Ronnald*, being a vagabound fellow, without ony certane residence, come latelie to Yla, and finding the House to be but slenderlie keeped, resolued to surpryse and tak the same: And for this effect, he and his complices, being four or syue in nomber, retered thame selues to ane wood, neare by the House, whair thay made some laderes, and with thame, one day, airlie in the morning, thay clam the vtter wall, keeped thame selues obscure whill the yettes were opined; and then they took the House, and put *the Bishopes* folkes oute thereof. The reporte whereof comeing to young *Angus Mcconeill*, lawfull brother to *Sir James*, who wes within sex myles of the House for the tyme, he immediatlie, according to the cuntrie saffioun, send the Fyrecrose[2] athorte the countrey, warning all the countrey people, who wer affected to his Maiesteis obedience, to ryse, aud concur with him in the recouerie of the House. And so he, with such assistance as come to him, inclosed the House. Thay within held good for sex dayes, being weel prouyded

[1] Probably this should be read, "wnto the tyme that his Maties will salbe." [2] The Fiery Cross. See *the Lady of the Lake*, and other works of Sir Walter Scott, for illustrations of this remarkable custom.

with pulder, lunt,[1] and bullett, whereof thay fand good ſtore in the Houſe; and thay wer prodigall anough in beſtowing the ſame vpon the beſeagares; bot in end, perceaueing that thay war not able to keepe the Houſe, thay in the night eſhued[2] at a bak yett, in a litle boat with ſex oares, which lay at the Caſtell; and took with them ſuch goodes as thay fand in the Houſe.

Angus followed thame, bot what farder has fallen oute, is not as yitt come to *the Counſelles* knowledge. *Sir James M^c^coneill* is *the Counſelles* informar of all this buſynes; and as he ſayes his brother hes offered to delyuer the Houſe bak againe to *the Biſhopes* ſervandes, who refuiſed to reſſaue the ſame. *The Counſell* haveing hard at lenth *Sir James* diſcourſe, made in this earand, and looking ſhortlie to heere from *the Erle of Ergyle*, or els frome *the Biſhope*, the conſtant and certane truthe of all this mater, thay haue reſerued all deliberation hearin, till thay heere from *the Biſhope* or *Erle*.

X. Sir James M^c^Donald his Offeris.

First, I offer, if it might pleaſe his Matie of his clemencie to give me Ilay, I would pay eight thowſand merkis yearlie thairfoir; and find ſufficient cautioun of Lordis and Barrounes for good payment and obedience, be my ſelfe, and all the Clannis that ſhall dwell there: And craves but a ſevin yeare Tak, to try me.

Secondlie, I offir, if his Matie pleaſe to hold Ilay in his awin hand, to mak it worth Ten Thowſand merkis yearlie to his Matie; and to tranſport my ſelfe, my brethir, and my kin to Ireland, or to whatſumewir other place his Matie will appoynt ws; and his highnes to give ws one yearis duetie or rent of Ilay, to by land with; and in the mein tyme, I ſhall go with *the Biſhop* of the Iles, and ſhall, God willing, ather get the Houſe and his pledgis, without any chairgis to his Matie, or than returne heir to mynd my owne waird, within fourtie dayis. Provyding, if I get this done, I haue aſſurance of his Matie and Counsall, that my ſelf and my brothir ſhall get leave to go, preſentlie thereafter, with my lord *Biſhop* to Courte, and get a kiſs of his Matie hand; and my cautionaris ſhall remaine bound for me, that I and my brother ſhall returne bak heir to his Maties Counsall, to abyid ſuch order as it ſhall pleas his highnes to injoyne to ws. And I ſhall leive my ſone heir, as pledge for my performance in all, and for ſatisfactioun to his Matie and Counsall. I ſhall bring *Rannald M^c^allaſter*, who firſt took the Houſe, and *Ronnald M^c^donald Vallich*, to ſuffer for their fault; and *Coll M^c^gillaſpie* to be keipt in Irnes, during his Maties pleaſour. My cautioneris ſalbe *the Erle of Tullibairne, Lord Burlie, Sir Ronnald M^c^Sorle, Johnne Campbell of Cadell, Malcum Toſhe*,[3] and *the Laird of Grant*; every one for Fyve Thowſand merkis—and my ſone to die if I faill.

And laſt, I offer, without ony conditioun of land or money, that if it pleaſe his Matie to give me libertie, vpon ſuch ſuretie by cautioneris as I am able to performe, or pledgis, I ſhall tranſport my ſelf and my brothir and kin out of all his Maties dominiounes, having his Maties Letter of Recommendatioun to the Estaittis of Holland; and libertie to tak vp men, if we be imployit; with his Maties frie pardoun for all byganis.

Fire-raising—Theft—Reset of Theft.

Jul. 14.—Johnne M^c^allaster M^c^James, in Daill of Rothiemurchus; Andro M^c^allaſter M^c^James, in Kynveachie; Johnne Dow M^c^kay, in Duchill.

Dilaitit of airt and pairt of the treſſonable Raiſeing of ffyre, Burneing and deſtructioun of the Houſſis and bigingis pertening to vmq^le^ George Dunbar in

[1] Match. [2] Escaped; *eschewed*. [3] Probably meaning *the Laird of MacIntosh*.

Clwne; and thiftious Steilling and away-taking of the haill infycht and pleneiffing, guidis and geir, being within the faidis Houffis, to the availl of ane thowfeand merkis; at the leift, of the thiftious Reffetting of the faidis guidis and vtheris contenit in the Letteris direct thairupoune, eftir the thiftious fteilling thairof be Dauid M^c^William and his complices; committit in October, 1598 ȝeiris.

Persewar, Mr Robert Dumbar, fone to the faid vmq^le^ George Dumbar.

The Juftice, with advyfe of my lord Aduocat, continewis this matter to the thrid day of the next Juftice-air of the fchereffdome of Innernes, quhairin thay duell, or foner, vpone xv dayis wairning, to vnderly the law for the crymes aboue fpecifeit: And ordanis cautioun to be ffund for the defenderis compeirance to that effect; vnder the panes contenit in the Actis of Parliament.

Johnne Roife of Glenbeg, as cautioner for the entrie of the perfones on pannell, tuik inftrumentis of thair entrie; and proteftis he may be fred of his cautionrie. Gregour Grant of Gartmoir become fouirtie, that thai and ilk ane of thame fall compeir, &c.

[*Sir Williame Heart, Juftice-Depute.*

Assessouris to the Justice, in this cause,—My Lord Archbischop of St Androis; Sir Gedione Murray, Thesaurar-depute; My Lord Clerk of Register, (Sir Alexander Hay of Whitburgh); My Lord of Kilsythe.]

Treasonable Resetting of Jesuits and Trafficking Papists, &c.

[After the details which have already been given in the Case of Ogilvie,[1] it seems unnecessary to occupy farther space in attempting to elucidate the present Trial. It must, however, be interesting to the reader that there should be preserved, in this place, some remarks made by *Calderwood*, in his larger MS. History,[2] which strongly depict the popular feeling, in relation to these State prosecutions against the Jesuits.

'William Sinclare, Robert Wilkie, (and) . . . . . Cruikfhanks were convicted, upon the fourteen of Auguft, for Refetting *the Jefuits* above named, and hearing of Maffe. The day following, betwix four and five afternoone, they were brought furth, with their hands bound, to the Scaffold, fett up befide the Croffe, and a gallows in it, according to the cuftome of Executione. While a great multitude of the people was gazing to fee the Executione, there was a Warrant prefented to the Magiftrats of Edinburgh, to ftay the Execution; foe they were carried back again to their wairds. The people thought this forme of dealing rather mockery then punifhment!']

Jul. 14.—Williame Sinclair, agent in Edinburgh; Robert Wilkie, browdinfter[3] in the Cannogait; and Robert Cruikfchank, ftaibler in Ed^r^.

Dilaitit of the treffonable Refetting of Mr James Moffett, Mr Johnne Ogilvie, and Mr Johnne Campbell, Jefuites and Traffiqueing Papiftis, within thair duelling houffis, dyuerfe dayis and nychtis, in the monethis of Auguft, September, and October laftbypaft, &c. viz.

Dittay *againft the Pannel.*

Forsamekill as our moft gracious and facred Souerane lord, furth of þat godlie zeill ever borne

[1] See his Trial, Vol. III., p. 330, &c. [2] Church Hist. MS., Adv. Library. [3] Embroiderer, a lucrative employment in those times; not *browster*, or brewer.

be his Maieſtie to þe mantenance of the trew RELIGIOUN, preſentlie (to the honour and praiſe of Almychtie God) profeſſit and eſtabliſchet within this Kingdome, and for the ruteing out of all Papiſticall and Idolatrus Religioun, with the blinded profeſſouris þairof, furth of the ſamyn; be mony godlie lawis and Actis of Parliament, deulie maid and publeiſt, alſweill in his hienes minoritie, as ſince his acceptatioun of the governament in his awin perſone, hes nocht onlie expreſlie ſtatute and ordanit, that na profeſſit JESUITE, SEMINARIE PREISTIS, nor TRAFFIQUEING PAPISTIS (being all ſuorne ennemeis to his ſacred Maieſties croun and eſtait) be fund within this his hienes realme, or ony part of the ſamyn, vnder dyuerſe capitall panes mentionat þairintill; bot lykwayis, be dyuerſe vtheris guid and godlie Lawis, Actis, and conſtitutiones of Parliament, ſpeciallie, be the 120 Act of his hienes tuelf Parliament, haldin at Ed[r] vpone the fyft day of Junij, 1592 ȝeiris, his Maieſtie and Eſtaitis than convenit, hes, be vertew of the ſaid Act, decernit and declairit, that in tyme þaireftir following, the RESSETTING of the ſaidis JESUITIS, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, aganis the Kingis Maieſtie and Religioun, preſentlie profeſſit within this realme, is and ſall be ane juſt caus to infer the cryme and payne of TRESSONE aganis the ſaid recepteris:[1] As the ſaid Act of Parliament, ratifeit and approvin in dyuerſe his Maieſteis Parliamentis, haldin ſenſyne, in the ſelff proportis. AND albeit it be of verritie, that vmq[le] *Mr Johnne Ogilvie*, alias *Watſone*, *Mr James Moffett*, alias *Halyburtoun*, and *Mr Johnne Campbell*, alias *Sinclair*, all profeſſit JESUITES and MESS-PREISTIS, with dyuerſe vtheris of that vnhappie and curſet ſect, war directit frome ROME, this laſt ȝeir, 1614, be THE POPE nnd his CARDINALLIS, to cum to this cuntrie and vtheris pairtis of his Maieſteis dominiones, to put in executioun, na dout, ſum feirfull and treſſonabill concluſioune, as perſones maiſt meit for ſic ane dangerous imployment; and haiſing, accoirding to þair commiſſioun, cum to this cuntrie, in the monethis of Junij or Julij, the ȝeir of God foirſaid; quhair, eftir þair cumming þairto, in all pairtis and companeis quhair thay reſoirtit, ſpeciallie, the ſaid *Mr Johnne Ogilvie*, ane vyld and abhominable Tratour, quha iuſtlie reſſauit his deſernet pwneiſchment, be þair perverſe ſpeiches and inſolent cariages, maiſt treſſonabillie and oppinlie condampned and diſavowit his Maieſteis ſouerane authoritie, ſetting vp and manteining, in place þairof, THE POPE OF ROME his vſurpet power for excommunicatting, depoſeing, and dethroneing KINGIS, and abſolueing ſubiectis from the othe[2] of þair naturall allegeance; intending na les, be thais þair treſſonabill ſpeiches and informationes, nor[3] to haif waknit and ſteirit vp ane oppin and feirfull REBELLIOUN. THIR perniceous and vnhappie miſcreantis, ſchakin louſe be þe authoritie of þair Generallis, to put in executioun ſic treſſonabill attemptis, nochtwithſtanding of his Maieſteis Lawis and Actis of Parliament maid aganis the recepting of thame and vtheris of þair devilliſche ſect, war, in the monethis of Julij, Auguſt, September, and October laſtbypaſt, at the leiſt, in ane or vther of the ſaidis monethis, maiſt treſſonabillie reſſett, harbourit, and interteneit be ȝow, and everie ane of ȝow, viz. the ſaidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikſchank*, within þair (ȝour) duelling houſſes, in maner as followis; that is to ſay: THE ſaid *Mr James Moffett*, alias *Halyburtoun*, ane profeſſit JESUITE, a PREIST, and TRAFFIQUEING PAPIST, haiſing cum to this burgh of Ed[r], to pervert, be his erronious doctrine, our ſouerane lordis ſubiectis fra þe trew RELIGIOUN preſentlie profeſſit, was, for that effect, maiſt treſſonabillie reſſet, harbouret, and interteneit be the ſaid *Williame Sinclair*, in ane or vther of the ſaidis monethis of Julij, Auguſt, September, and October laſtbypaſt, dyuerſe dayis and nichtis, within his duelling hous in Ed[r]; and all neceſſar comforte, releif, and intertenement miniſtrat to him, at all occaſions, as gif he had bene (ane of) his Maieſteis faithfull and loyall ſubiectis and profeſſouris of þe trew RELIGIOUN; eftir he was knawin to þe ſaid Williame Sinclair and his wyfe to be of the contrair[4] RELIGIOUN, be þe informatioun of ane James Colt, he keipit daylie ſocieatie and companie with þe ſaid JESUITE, vpone the ſtretis, keipit tryſtis and meittingis with him and with the ſaid vmq[le] *Johnne Ogilvie*, ane notorious Tratour, within the duelling houſe of *Robert Wilkie*, in the Cannogait, and duelling hous and ſtable of *Robert Cruikſchank*, and within the Abbay

[1] Receivers; resetters. [2] Oath. [3] Than. [4] Opposite; adverse.

ȝairdis, and in dyuerſe vtheris pairtis of this burgh of Ed^r and ſuburbis þairof; committing þairthrow, maiſt oppin and vnpardonable Treſſone, and according to the ſaid Act of Parliament, incurring þairthrow the panes and pnneiſchment expreſſit þairintill. Lyk as, the ſaidis *Mr James Moffett, Mr Johnne Campbell,* and *Mr Johnne Ogilvie,* all profeſſit and avowed Jesuites, war, in ane vther of the ſaidis monethis, treſſonabillie reſſett, hurdit,[1] keipit cloſe, with thair horſſis and proviſioun, be the ſaid *Robert Cruikſchank,* ſtaibler, within his duelling hous and ſtable in Ed^r, be the ſpace of dyuerſe dayis and nychtis, war interteneit be him þairintill, and furneiſt with all maner of conforte, help, and releiff, accoirding to his habilitie, committing þairthrow, oppin and manifeſt Tressone, conforme to the ſaid Act of Parliament. And ſiclyk, the ſaidis *Mr James Moffett* and vmq^le *Mr Johnne Ogilvie* war maiſt treſſonabillie reſſet, harbouret, and interteneit, in ane or vther of the ſaidis monethis, be the ſaid *Robert Wilkie,* within his duelling hous in the Cannogait, of certane knawlege that thay war Jesuites, inſafar as three ſeuerall Messis[2] war ſaid be the ſaid *Johnne Ogilvie,* within ȝour chalmer, of ȝour ſpeciall knawlege; to the quhilkis Messis, dyuerſe perſones maid þair reſoirt, and the ſaid Robert keipit the dur, and was quhyles within and quhyles without. Be the wilfull and treſſonable Reſſetting of the quhilkis Jesuites, Seminarie Preistis, and Traffiqueing Papistis, profeſſit and avowed enemeis to his Maieſteis perſone, Croun, and eſtait, and trew Religioun preſentlie profeſſit, and that within thair duelling houſſis, and vtherwayis, as is aboue declairit, the foirſaidis perſones, and ilk ane of thame, accoirding to the tennour of the ſaid Act of Parliament, hes incurret the pane and pwneiſchment of Tressone, viz. to be pwneiſt and demanit[3] as Tratouris, and þair haill landis and guidis fforfalt and eſcheit to his Maieſteis vſe; to the terrour of vtheris to abſtene fra the lyk heireſtir.

Williame Sinclair, eftir reiding of the Dittay, declairit, that it is of treuth that he hes offendit God and the Kingis Maieſtie, by Reſſetting of *Mr James Moffet,* Jeſuite, in the moneth of October laſt; quhilk he did only vpone ſimplicitie:[4] And denyis the Reſſet of *Mr Johnne Ogilvie,* or *Mr Johnne Campbell,* Jeſuites, at ony tyme: As alſo, denyis the Reſſetting of the ſaid *Mr James Moffet,* in the monethis of July, Auguſt, and September, ſet doun in the Dittay. My lord Aduocat acceptis his Confeſſioun, in that he acknowleges his Reſſetting of Moffet, in the moneth of October; and adheris only thairto, aganis Williame Sinclair.

It is allegit be Williame Sinclair, for him ſelff and remanent perſones vpone pannell with him, that the Dittay is nocht relevant, nather can the ſamyn be put to the knawlege of ane Aſſyſe, except it war ſpeciallie condiſcendit thairin, that *Mr James Moffet* ſaid Meſs, and was a traffiker aganis the Kingis Maieſtie and the Religioun.—It is anſuerit be my lord Aduocat, the allegeance aucht to be repellit, in reſpect of the Dittay and Act of Parliament, beirand diſtinctlie, that nocht only the Reſſetteris of the Sayeris of Meſs committis Treſſone, bot alſo the Reſſetteris of Jeſuites, Seminarie Preiſtis, and Traffiking Papiſtes aganis the Kingis Maieſtie and Religioun, committis Treſſone. And trew it is, that the ſaid Mr James Moffet is ane notorious Jeſuite, and ane traffiker aganis the Religioun profeſſit within this realme, as is confeſſit be the ſaid Williame Sinclair

[1] Literally, *hoarded;* concealed with extreme caution, as one would a hoard of money. [2] Masses.
[3] Used; treated. [4] Goodnature; without any treasonable intent.

him ſelf, in his awin Depoſitioun, beirand, that Moffet declairit to him, that he was cum to this cuntrie to venter his lyfe for the ſaiftie of ſaules that war in danger; and ſa, was ſufficientlie knawin to the ſaid Williame, that he was ane Jeſuite and traffikeing Papiſt aganis his Maieſtie and Religioun: Be recepting of the quhilk Jeſuite thaireftir, he has fallin vnder the danger of the ſaid Act of Parliament.

It is forder allegit be the pannell, that he can nocht pas to ane Aſſyſe for the Recepting of Jeſuites, except, conforme to the Act of Parliament, made in anno 1593, cap. 164, he had reſſet thame, *ſcienter et prudenter*, be the ſpace of thre nychtis togidder, or thre nychtis at ſeuerall tymes; be the quhilk Act, it is provydit, that gif it be ſa tryit,[1] that the perſone convict for the *firſt* falt, his eſcheit ſall fall; ffor the *ſecund* falt, ſall amit[2] his Lyfrent; and (ffor) the *thrid* falt, ſall incur the crymes of Treſſone. And thairfore, except the ſaid Recept be ſa tryit, the Dittay is nocht relevant.—It is anſuerit, that the allegeance aucht to be repellit, in reſpec the ſaid Act of Parliament nawayis derogattis the Act of Parliament quhairupoun the Dittay is foundit: And thairfoir, nochtwithſtanding of the ſaid allegeance, ſould pas to ane Aſſyſe.

It is forder allegit be the pannell, that be the Act of Parliament maid in anno 1600 ȝeiris, cap. 18, thair can be na forder exactit of the Recepteris of Jeſuites, bot ane pecuniall payne; quhilk he is content to pay, accoirding to the Lordis modificatioune: And thairfoir, the Dittay for Treſſone can nocht pas to an Aſſyſe.—It is anſuerit, that the allegeance aucht to be repellit, nochtwithſtanding of the ſaid Act quhairupoun the ſamyn is foundit, in reſpect the ſamyn nawayis derogatis the Act of Parliament maid be his Maieſtie and Eſtaittis, in anno 1592, bot ratifies the ſaid Act in everie poynt.

It is allegit be the pannell, that he can nawayis pas to ane Aſſyſe for Reſſetting of the ſaidis Jeſuites, nather is the Dittay relevant aganis him, in reſpect, be ane Act of Parliament maid at Edinburgh, in anno 1609, cap. *quinto*, it is thair planelie explanet and declairit, that all Actis maid ofbefoir aganis the Reſſetteris of Jeſuites, &c. haif full force, and be put to dew executioun aganis the ſaid Reſſetteris, ſa ſone as intimatioun and denunciatioun beis maid of the ſaidis Jeſuites, Seminarie Prieſtis, and vtheris contenit thairin, at the Mercat-croce of the heid burgh of the ſchyre quhair thay duell, and Mercat-croce of Edinburgh;[3] bot ſa it is, that thair was na intimatioun nor denunciatioun maid at ony Mercat-croce of the ſaid *Mr James Moffet* his name, befoir his Reſſetting within the pannellis hous, to be ather a Jeſuite, Seminarie Preiſt, or of ony vther ordour: And thairfoir, the ſaid Dittay for his Recept can nocht pas to ane Aſſyſe.—It is anſuerit be my lord Aduocat, that the explanatioun repeitit be the pan-

[1] If it so turns out upon Trial. [2] Lose. [3] As the *commune forum*.

nell, ſet doun in the ſaid laſt Act of Parliament, nawayis derogatis or takis away the former Act of Parliament maid aganis the Reſſetteris, quhairupoun the Dittay is conſauet; bot be the contrair, the ſaid Act is Ratifeit, and ordanit to haif frie ſtrenth, effect, and executioun, accoirding to the tennour thairof; and the explanatioun of the ſaid Act, in anno 1609, is only in fauouris of ſic as Reſſettis Papiſtis ignorantlie, nocht knawing thame to be Papiſtes, or of ane contrair Religioun: Bot it was ſufficientlie vnderſtuid to the pannell, befoir *Moffettis* Reſſet, that he was ane Catholik ffather, and was cum to venter his body for the Catholik Faith, as is confeſſit be his Depoſitioun: And thairfoir, the ſaid allegeance aucht to be repellit, and the pannell pas to ane Aſſyſe.

Interlocutor *of Relevancy.*

The Justice, with advyſe of the Aſſeſſouris preſent, Repellis the haill allegeances proponit be the pannell; and ffindis the Dittay relevant: And Ordanis the ſamyn to be put to the knawlege of ane Aſſyſe.

Assisa.

Thomas Fiſcher, mercheand burges of Edinburgh,
Eduard Johneſtoun of Ryhill,
Williame Cocherane, mercheand burges of Edinburgh,
Dauid Mitchell, merchand thair,
Alexander Speir, mercheand thair,
Robert Halybrnntoun, merchand thair,
Johnne Inglis, ſkynner thair,
Nicoll Vduard, mercheand thair,
Williame Nemok, tailzeour thair,
Thomas Weir, peuderer thair,
James Weill, mercheand thair,
Dauid Williameſone, elder, mercheand thair,
Capitane James Hunter, burges thair,
Alexander Broun, elder, mercheand thair,
Jo. Fairlie, younger, burges thair.

My lord Aduocat takis inſtrumentis of the ſuering of the Aſſyſe: And for verificatioun of the Dittay, producet the pannellis Depoſitiones, viz. the ſaid William Sinclairis Depoſitioun, all writtin and ſubſcryuit with his hand; and the vther tua Depoſitiones maid in preſens of dyuerſe Lordis of his Maieſteis Secreit Counſell, confeſſing thair particular Reſſetting of the Jeſuites, in maner ſpecifeit in thair Dittay, and thairupoun aſkit inſtrumentis; and proteſtis for Wilfull Errour, gif thay Acquit.

Verdict. The Aſſyſe, all in ane voce, be the mouth of Dauid Williameſone elder, chanceller, ffand, pronuncet, and declairit the ſaidis *Williame Sinclair*, *Robert Wilkie*, and *Robert Cruikſchank* to be ffylet, culpable, and convict of the treſſonable Reſſetting of the ſaidis Jeſuites, in maner ſpecifeit in thair Dittay; accoirding to thair awin Depoſitiones, producet for verificatioun thairof.

Sentence. To be tane to the places of thair Executioun, and thair to be execute to the daith, and vtherwayis demanit as Tratouris: And all thair landis, guidis, and geir to be fforfalt and eſcheit to his Maieſteis vſe.

Aug. 15.—The quhilk day, the Justice being ſitand in Judgement, ane Warrand was producet be him, and ordanit to be red, quhilk was direct to him fra his Maieſtie, &c. viz.

JAMES R.

To our truſtie and weilbelouit SIR WILLIAME HEART, kny^t, deputy Juſtice generall, in our kingdome of Scotland. QUHAIR AS, Williame Sinclair, Aduocat, Robert Wilkie, imbroderar, and on Cruikſchank, a ſtaibler, ar convicted and condemned of Treaſſone, for the Wilfull Recept and ſupplieing of Moffet the Jeſuite: IT is our pleſour, that ȝe proceid to the finall pronunceatioun of the Sentence and Executioun of the pwneiſchment provydit by our Lawis in the lyk caices againſt thame, with all convenient expeditioun: For doing quhairof, theſe preſentis ſall be ȝour ſufficient Warrand. GEVIN at Sariſburrie, the 26th of Julie, 1615.

For obedience of the quhilk WARRAND, the Juſtice ordanit the ſaidis Williame Sinclair, Robert Wilkie, and Robert Cruikſchank, to be broght furth of Waird to the Mercat-croce of Edinburghe; and thair to be Hangit vpone ane gibbet, quhill thay be deid: And all thair landis, heritageis, guidis, geir, and vtheris pertening to thame, to be fforfalt and eſcheit to our ſouerane lordis vſe, &c.

Eftir the pronunceatioun of the quhilk Sentence, the ſamyn was intimat to thame be Johnne McNacht, bailȝie of Edinburgh, to quhome directioun was gevin be the ſaid Juſtice, for cauſeing put the ſamyn to executioun, conforme to the Warrand aboue ſpecifeit.

Aug. 30.—BEING of new agane brocht furth of Waird, and preſentit vpone pannell, be the Bailleis of Edinburghe, as thay quhais dome and executioun thairof, &c. was of our ſouerane lordis meir mercie and grace delayit and ſuperceidit, THE JUSTICE, for obedience of his Maieſteis poſteriour WARRAND, direct to my lord Archebiſchope of St Androis, My Lord of Bynning his hienes Secretar, and Sir Gedione Murray his hienes Theſaurer depute, quhairof the tennour followis, pronounced Sentence accoirdingly.

JAMES R.

WHEARAS, We ar crediblie informet, that Williame Sinclair, ane Aduocat before þe Seſſioun, Robert Wilkie, browdinſter, and on Cruikſchank, ane ſtaibler, is convict of Treaſone, for Reſſetting of Moffet and Ogilvie the Jeſuite: IT is our pleaſour, that Williame Sinclair and Robert Wilkie, be Baniſchet our dominiones during our pleſour: And that þe ſaid Cruikſchank be Baniſchet the toun of Edinburghe during our pleſour. GEVIN at Sallſberrie, the xxvij day of Julij, 1615.

Quhilk DOME and SENTENCE, the ſaidis perſones, in all humilitie, imbracet and acceptit vpoun thame, &c.

[CURIA *Juſticiarie, ſ. d. n. regis tenta in Pretorio ciuitatis Glaſguen. per D. Will. Heeart.*]

Treasonable Resetting of Jesuits—Hearing of Mass, &c.

Sept. 5.—SIR JAMES CLEILLAND (KNEILLAND) of Monkland, kny^t, Williame Maxwall of Cowglene,[1] Robert Vrie, wryter, burges of Paiſlay.

Dilaittit of the treſſonable Reſſetting of Mr Johnne Ogilvie, Jeſuite, within thair duelling houſſis: And heiring of dyuerſe Meſſis ſaid be him thairintill;

[1] See their Examinations appended to the Trial of *John Ogilvy*, Vol. III., 330.

contrair the Actis of Parliament; committet in the monethis of July, Auguſt, and September, 1614 yeiris; at the leiſt, in ane or vther of the ſaidis monethis.

Persewar, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our ſouerane lord.

Prelocutouris in defence, The Laird of Keir, the Laird of Muſchett, the Laird of Pollok, Johnne Cranſtoun, Mr Johnne Halyday, Aduocat, Mr Thomas Pollok, Aduocat.

The Juſtice, with advyſe of my Lord of St Androis, my lordis Kilſythe, Clerk of Regiſter, and his Maieſteis Aduocat, continewis this matter to the ſaxt day of December nixt, to be tryit at Edinburghe: And Ordanis the pannell to find Cautioun for thair entrie that day and place, in the hour of caus, vnder the panes following, viz: The ſaid Sir James Kneilland, vnder the pane of Ten Thowſeand merkis; the ſaid Williame Maxwall, vnder the pane of Fyve Thowſeand merkis; and the ſaid Robert Vrie, vnder the pane of Fyve Hundreth merkis money.

The perſones on pannell offeris thame ſelffis to the Tryell of the Law for the ſaid cryme, diſſaſſenting to the ſaid continewatioun; and thairupoun aſkit inſtrumentis: And for obedience of the ſaid Juſtice Ordinance, the ſaid Sir James Kneilland ffand Sir Johnne Home of Huttonehall cautioner for him; the ſaid Williame Maxwell ffand Sir Johnne Maxwell of Pollok, kny^t, cautiouner for him; and the ſaid Robert Vrie ffand Alexander Cocherane of that Ilk, cautioner for him, that thai ſall compeir befoir the Juſtice and his Deputis, in the Tolbuth of Edinburghe, the ſaid ſaxt day of December nixt, in the hour of caus, and vnderly the Law for the ſaidis crymes, vnder the ſeverall panes aboue writtin.

Compeirit Harbert Maxwell, burges of Edinburghe, and producet ane Warrand of the Lordis of Secreit Counſell, anent the deſerting of the dyet appointit for tryell this day.

Justice, Juſtice-clerk, and ȝour deputis: ȝe ſall, vpone the ſicht heirof, deſert the dyet appointit for Tryell of Sir James Kneilland of Moukland, Williame Maxwell of Cowglen, and Robert Vrie, burges of Paiſlay, the ſaxt day of December nixtocum, ffor the Reſſetting of vmq^le Mr Johnne Ogilvie, Jeſuite: Anent the quhilk, thir preſentis ſalbe ȝour Warrand. Subſcryuit At Ed^r, þe xxiij day of November, 1615. Sanctandrois. Sr J. Murray. Alex^r Hay. Sr J. Oliphant. Kilsyth.

The pannell diſaſſentis to all forder continuatioun; and proteſtit, in reſpect that this is the ſecund dayet keipit be thame in this matter, firſt at Glaſgow, and now at Edinburgh, that their cautioneris be fred, viz., Sir Johnne Home of Huttonehall for the ſaid Sir James, and Alex^r Cocherane of that Ilk, for the ſaid Robert Vrie.

Hearing of Mass, &c.

Sep. 13.—Mr James Moffet, alias Halyburtoun, ane Jeſuite Preiſt.

Dilaitit of the Treſſonable Hearing of Maſs within this cuntrie, ſpeciallie within the place of Auchindoun, a tuentie yeir ſyne or thairby: And for con-

travening the Actis of Parliament in reſoirting within this cuntrie, he being ane Jeſuite and Seminarie Preiſt, directit from Rome, to peruert his Maieſteis ſubiectis from the trew Religioun; and vtheris crymes contenit in his DITTAY.

DITTAY *againſt Mr James Moffet.*

[The preamble is similar to those which precede, and founds upon the Act 29th July, 1587. It then states,]

"THAT ȝe, being tranet vp at ſcoles and Colledges within this Kingdom, and haiſing accompleiſchet ȝour conſe in the College of St Androis, quhair ȝe was laureat; and haiſing þaireſtir applyit ȝour mynd to the ſtudie of Theologie, and dyuerſe tymes maid ȝour privat exerceiſſis within þe New Colledge þairof, ȝe, in ȝour awin fuliſche opinioun, playing the rwnigait[1] frome the trew Religioun, firſt ſtudeit and profeſſit be ȝow within this Kingdome, adreſſit ȝour ſelf to the place of Auchindoun, quhair ȝe, aganis the ſaidis Actis of Parliament, hard ane Meſs, and was preſent at þe Celebratioun þairof, the Auld Laird of Auchindoun and Mr James Gordoun being preſent withe ȝow, at the heiring of þe ſaymn: LYK AS, ȝe, haiſing ſchortlie þaireſtir paſt furth of this cuntrie to ROME, in Italie, and haiſing þair reſſauit the ordour of a Jeſuite Preiſt, and haiſing remanit furth of þis cuntrie be the ſpace of tuentie yeiris togidder, ſtudieing to þe ſaid Roman Religioun, ȝe being ane profeſſit Jeſuite, expres contrair the tennour of the foirſaid Act of Parliament, and in manifeſt contempt þairof, and of his Maieſteis royall authoritie, in the moneth of Julij, 1614, returnet to this realme, be directioun of CLAUDIUS AQUAVIVA, ȝour Generall, off plane purpois and intentioun to pervert and ſeduce his Maieſteis ſubiectis frome the trew Religioun preſentlie profeſſit; reſoirtit in dyuerſe pairtis of this cuntrie, ſpeciallie, within the burgh of Edinburghe, Cannongate, and Citie of St Androis, quhair ȝe was tane, apprehendit, and brocht to this burgh of Edinburghe, and Tolbuth þairof, quhairin ȝe haiſ bene detenit priſſoner, as ane Jeſuite Preiſt, and a perverter of þe Kingis Maieſteis ſubiectis from the trew Religioun, preſentlie profeſſit," &c.

The pannell, efter reiding of the DITTAY and his accuſatioun of the crymes mentionet thairintill, offerit him ſelff in his Maieſteis Will for the ſamyn: Quhairupoun my lord Aduocat aſkit inſtrumentis.—Thairefter my lord Aduocat producet the WARRAND following:—

JUSTICE, Juſtice-clerk, and ȝour deputis: ȝow ſall appoint a Juſtice Court to be haldin in the Tolbuth of Edr at ſuche convenient day as ȝou think goode; and þairin ȝou ſall put Mr James Moffet, Preiſt, to the knowlege of ane Aſſyſe for ſuche crymes as ſall be gevin in Dittay againes him, be his Maieſteis Aduocat, and proceid and miniſter Juſtice vpone him, conforme to þe lawis of this realme; Bot yf the ſaid Mr James ſall happin to cum in his Maieſteis will, ȝow ſall pronunce his Maieſteis will as followis, to wit: That the ſaid Mr James ſall be Baniſchet his Maieſteis dominiones, and nevir return agane within the ſamyn, vnder the pane of deid: And that he act him ſelff, judiciallie, to depairt and pas away betuix and ſuche a day as ȝow ſall appoint, and nocht to returne vnder the ſaid payne: And forder, that he ffind cautioun actit in the Buiks of Secret Counſall to this ſame effect, vnder the pane of Thre thowſand merkis, to be incurrit be his cautioner, beſyde the pane of deid to be execute vpone him ſelff, in caice he fail3ie in the premiſſes. And this Dome being pronuncet, and he haveing actit him ſelff, that ȝow ſend him bak agane to his waird, quhill the ſaid caution be fund, and quhill a ſchip be in reddines quhairin he may be tranſpoirtit. Quhairanent þir preſentis ſall be ȝour Warrand. AT EDINBURT, the xxiij day of Auguſt, 1615.

AL. CANCELLS. SANCTANDROIS. SCONE. BINNING. J. PRESTOUN. AL. DRUMMOND.

[1] Runagate; *renegado.*

Sentence was pronounced accordingly. He was adjudged to 'depairt and pas away furth of his Maiesteis dominiones, betuix and the tuentie day of October nixtocum, wind and wedder servand.'

Slaughter.

Nov. 29.—James King, sumtyme of Barro; Alexander Lummisdene of Clova; Mr Gilbert Arnauld, indueller in Aberdene; and David King in Hoy, in Orknay.

Dilaitit, accuset, and persewit at the instance of Elizabeth Seatoun, only dochter to vmq^le Alexander Seatoun, than ffiar of Meldrum, Johnne Vrquhart of Craig-Fintrie, hir spous, for his intereis, Johnne Seatoun now of Meldrum, &c., off airt and pairt of the Slauchter of the said vmq^le Alexander Seatoun, with schottis of hagbuttis and muscattis; committit vpone the landis of Barro, in the hie-way betuix Meldrum and the Kirktoun of Bourtie, vpone the xxviij day of August, 1590: And siclyk, ffor beiring and schuitting of Hagbuttis, muscattis, and pistolettis, &c.

Mr Robert Fairlie, seruitour to Mr Alex. King, Aduocat, produceit ane Warrand of his Maiestie, daitit at Newmarket, the sixtenth of November, 1615, anent deserting this dyet. The Diet was deserted accordingly.

Letters of Exemption

In favour of the Provost, Bailies, Council, and Community of The Burgh of Aberdeen.

Dec. 2.—Compeirit personallie Mr Thomas Nicolsone, Aduocat, in name of the Provost, &c. of Abirdene, and producet to my Lord Justice Letters of Exemptioun, vnder the Previe seill, quhairof the tennour followis.

James, be the grace of God, King of Scottis: To all and sindrie our schereffis, stewartis, Justice, Justice Clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our Lawis, thair deputis and officeris, present and to cum, leigis, and subiectis, quhome it effeiris, to quhais knawlege thir our Letteris sall cum, Grating. Wit ȝe ws, vnderstanding that the Provost, bailleis, counsall, and communitie of our burghe of Aberdene, ar oft tymes atteichet and summondit to pas vpone Inqueistis and Assysis to our burgh of Ed^r and utheris pairtis outwith þair boundis and Jurisdictiones, in crymes committit far distant fra thame, quhairof thay ar altogidder ignorant; and that thay had ane Exemptioun to the effect vnderwrittin gevin and grantit to thame be ws, with advysis of vmq^le our rycht trest cousing James Erle of Moirtoun, Lord Dalkeith, &c. Regent to ws our realme and legis for the tyme; as the samym Exemptioun, of the dait at Aberdene, the thrid day of September, the ȝeir of God I^m V^c thresfoir fourtene ȝeiris, deulie and ordourlie past and admittit in the Justice Court haldin at our said burgh of Aberdene, immediatlie þairefter, be vmq^le Sir Johnne Bellenden, our Justice clerk for the tyme, at mair lenth beirs. As also, considering, how vpone the occasioun of Commissiones of Leutennendries and Justiciareis, grantit in fauouris of the Noblemen of the cuntrie, or to vtheris, for administratioun of Justice passing vpone our Rebellis, and disorderit persones for revenge of privat

quarrellis and contraverſeis betuix pairtie and pairtie; the ſaidis Proveiſt, bailleis, counſall, and communitie ar oft tymes drawin furth of þair awin Toun to vtheris pairtis of the cuntrie, to the grit hazard of þair lyves and wrak of þair guidis; albeit, that accoirding to the libertie of frie Burgh, quhair with thay and þair prediceſſouris ar infeft and foundit, thay aucht only to attend vpone our ſelff, being in the ffeildis in proper perſone, or with our Leutennent, in defence of our realme aganis forane nationes. And haiſing conſideratioun, that our ſaid Burgh of Aberdene lyis within the North pairts of our realme, far diſtant fra ws, and of the guid, trew, and thankfull ſeruice done to ws and our prediceſſouris be the Proveiſt, bailleis, counſall and communitie of our ſaid Burgh, alſweill in tyme of weir as of peace; and of þair reddie and dentiefull obedience towardis ws, quhairof we haif daylie pruif and experience, and reſpecting þair guid mind to continew þairin hereftir: Thairfoir, we haif gevin and grantit, and be thir our Letteris gevis and grantis to the Proveiſt, bailzeis, counſall, communitie, burgeſſis, craftiſmen, and induelleris of our ſaid Burgh of Aberdene, preſent and to cum, ſpeciall Licence to remane and abyde at hame fra all Raidis, Conventionis, Oiſtis, Aſſemblis, Airmeis, Gatheringis, Wappon-ſchawingis or Weiris, to be maid be ony our Juſtices, be Commiſſioun of Leutennendrie, Juſticiarie, or vther Commiſſioun quhatſumeuir, to be grantit be ws, or meiting of thame in ony pairt within our realme in tyme cuming, except þat aither our ſelff be preſent in proper perſone, or that our Leutennent, accumpaneit with the remanent of our realme, be vpone the defence of the cuntrie, aganis forane nationes, or that our ſelff pas for repreſſing of Rebellis and Traitouris, aganis our perſone within the cuntrie: And fra all compeirance or paſſing vpone ony Aſſyſſis or Inqueiſtis, in quhatſumeuir crymes or actiones, (except ſic crymes as ar committit within our ſaid burgh, friedome thairof, and tua myles about the ſamyn,) Exemis[1] and diſcharges thame and ilk ane of thame þairfra, during all the dayis of þair lyftymes. And willis and grantis þat þay in doing þairof ſall incur na payne, ſkayth, cryme, nor danger in þair perſones, landis, or guidis, nor be callet nor accuſet þairfoir criminallie nor civillie, be ony maner of way, in tyme cuming, nochtwithſtanding ony our Actis, ſtatutis, ordinances, Letteris, proclamationes, or charges quhatſumeuir, ſpeciall or generall, maid or to be maid in the contrair; anent the quhilkis, and all panes contenit þairintill, We haif diſpenſit, and be thir our Letteris diſpenſis with the Proveiſt, bailleis, counſall, communitie, burgeſſes, craftiſmen, and induelleris of our ſaid burgh, preſent and to cum, for euir. Dischargeing heirfoir, zow, all and ſindrie our Schereffis, Stewartis, Juſtices, Juſtice clerkis, Theſaurer, Aduocat, and all vtheris Judges and miniſteris of our lawis, zour Deputis and officeris, preſent and to cum, off all calling, accuſeing, atteiching, arreiſting, ſummonding, wairning, poynding, trubilling, or ony wayis intrometting with the ſaidis Proveiſt, bailleis, counſall, communitie, burgeſſis, craftiſmen, and induelleris of our ſaid Burgh, preſent or to cum, þair landis or guidis, in ony wayis, in tyme cuming, for þair ſaid remaning and abyding at hame fra our ſaidis Raidis, Airmeis, and vtheris foirſaidis, and fra all and ſindrie Inqueſtis and Aſſyſſis, to be committit, as ſaid is; and of zour offices in þat pairt, be thir our Letteris. Gevin vnder our Previe Seill, At Dalkeithe, the ſaxtene day of Maij, the zeir of God I^m. ffyve hundreth fourſcoir tuelff zeiris, and of our regnne the tuentie ffyve zeir.

Per Signaturam manibus ſ. d. n. Regis ac Secretarij ſubſcriptam.

[*D. Will. Heart, Juſticiarius-deputatus;*
Assessores Juſticiario, D. Alex. Drummond de Meidhoip, D. Will. Levingſtoun de Kilſythe, Senatores Collegij Juſticie ſ. d. n. Regis.]

Barbarous Slaughter and Maiming of Sheep—Oppression, &c.

[The following Case is altogether unparalleled, even in the annals of Border or Highland revenge. On account of its singularity, it has been considered necessary to make some investigation into the

[1] Exempts.

subject, for the information of the curious enquirer. The story is so forcibly told in the proceedings before the Criminal Court, that the Editor shall not weaken its effect by attempting to rehearse the facts in this place. It is enough for the purposes of this Collection, that the reader is informed, that the property of *Howpaslot*, an esate of one of the most ancient branches of the name of *Scott*, having, by some means, come into the temporary possession[1] of *Sir James Douglas of Drumlanrig*, a powerful Border Baron, who had distinguished himself by the activity with which he aided the suppression of the disturbances on the Marches, *the Lady Howpaslot* appears to have been roused into fury at the very idea of the domains of her ancestors coming into the hands of a Douglas. She therefore instantly held a council of war in the *Town of Hawick*, of which *Drumlanrig* was the Superior, in the month of April, 1615, at which she and her friend, *Jean Scott of Satchells*, presided. The bravos and ruffians who figure in this Trial, and of whom every Clan had a few to do their worst work, at once undertook to execute the orders of these infuriated females, and, as will be seen by the subsequent proceedings, they succeeded in effectually preventing *Drumlanrig* from 'plenifling,' or stocking, the farms. These villains greedily engaged to maim and destroy the whole of the sheep which had been brought to the grounds; and this cruel and barbarous act they performed in a manner almost too horrible to be related.

Sir James Douglas did not long survive the perpetration of this atrocious fact, having died Oct. 16, 1615. He was succeeded by his son *Sir William*, who was afterwards created *Viscount of Drumlanrig*, *Lord Douglas* of Hawick and Tibbers, Apr. 1, 1628; and *Earl of Queensberry*, Jun. 13, 1633. *Sir William* actively pursued these heartless ruffians, and was successful in bringing all of them to deserved punishment. In the Appendix to this Trial, the reader will find a characteristic Letter from this Nobleman to his kinsman, *Murray of Lochmaben*, the Original of which the Editor has fortunately discovered in the Advocates' Library.

In an interesting communication from Sir Walter Scott, Bart., on the subject of this Trial, with which the Editor has been favoured, some interesting particulars are detailed, regarding the Scotts of the Border. No apology need be made for enriching these pages with the following extract:—

'Our Name were very clannish. I have, for the time, in my possession, a Band or Association between *Sir Walter Scott of Branxholm, knight, Laird of Buccleuch*, and about fifty of the most important men of his kin and Clan, [dated 3d June, 1589.] It proceeds upon an Association made to the same purpose by Sir Walter Scott, the father of the Chief, and is calculated to secure against any Clansman taking any "room" or possession over the head of another of the Name. Any one who was accused of having done so, bound himself to stand by the award of five men, to be mutually chosen, bearing the Name of Scott. Even if the Chief should encroach upon the possessions of any inferior person of the Name, he declares he will submit the cause, in like manner, to four persons of the Name of Scott; which shows an independence on the part of the Clansmen which I was not prepared for. The Band is the property of my cousin and relative, *William Scott, Esquire, of Raeburn*. It seems to have been calculated to prevent kinsmen from going to law with each other, and to secure a species of justice within the Clan, to the advancement of the "guid and godlie purpofes" of their Chief. The "guid and godlie purpofe" of *the Cordiner* and *the Suckler* seems to have been intended for the same reason. Howpaslot was an old inheritance of *the Scotts*, and, on whatever grounds Douglas possessed it, returned to the Name again. *Douglas*, you are aware, was *Lord of Hawick*, to which *Buccleuch* afterwards succeeded.

'Of the people mentioned in the Trial, I know little. *Satchells* is probably the place of the name, lying on the *Ale* or *Teviot*, now part of *John Corse Scott of Synton's* property. The individual termed

[1] It is by no means unlikely that *Howpaslot* was 'conqueist' by means of Wadset, Apprising, or other legal 'Diligence;' for it is certain, that it was but a short period in the occupation of *the Laird of Drumlanrig* or his Tenants. The summary mode by which his '*guidis*' were disposed of, may have precipitated his bringing these matters to a close, and his accepting of a pecuniary accommodation.

William Scott, called in Satchells, may have been the father of *Walter Scott of Satchells*, the Historian of the Clan, terming himself,

An old Souldier, and no Scholler,
And one that can write nane,
But juſt the letters of his name.'

The singular work here quoted by SIR WALTER SCOTT, a copy of which is in the Editor's Collection, is titled, 'A TRUE HISTORY of ſeveral honourable FAMILIES of the right honourable NAME OF SCOT in the Shires of Roxburgh and Selkirk, and others adjacent. Gathered out of Ancient Chronicles, Hiſtories, and Traditions of our Fathers, by *Capt. Walter Scot.* EDINBURGH, printed by the Heir of *Andrew Anderſon*, Printer to his moſt ſacred *Majeſty*, City, and Colledge, 1688.' It was composed by the author at the very advanced age of *Eighty-eight!* He states that he was fifty-seven years in active service, abroad and in Scotland, having entered the army at the age of twenty-nine. Although he boasts of being illiterate, he seems to have had much of the spirit of a staunch Member of the *Roxburghe, Bannatyne*, or *Maitland Clubs*—for he concludes his extraordinary work with the following '*L'Envoye.*'

'Therefore be gone my Book, ſtretch forth thy VWings and fly
Amongſt the Nobles and Gentility:
Thou'rt not to ſell to Scavengers and Clowns,
But given to worthy perſons of Renown!
The Number's few I've printed, in regard
My Charges have been great, and I hope Reward;
I cauſ'd not print many above twelve-ſcore,
And the Printers are engaged that they ſhall print no more!'

The Editor, thinking that the Original CONTRACT or BAND OF ASSOCIATION between the heads of the powerful FAMILIES of the NAMES of KER and SCOTT, will prove most acceptable, as preserving the memory of times so powerfully depicted by *Sir Walter Scott* in many of his works, he has, after examining the ancient Records, procured a transcript, which is also appended to the present Trial. So able an abstract of the renewal of this '*Band*' has been given by *Sir Walter Scott*, that it has not been deemed necessary to apply for liberty to present the reader with a copy of it.]

Feb. 20, 1616.—GEORGE SCOTT, cordiner in Hawik, '*the Souter*,' callit *Mariones Geordie*; Walter Scott, ſone to *Braidis Andro*; Ingrem Scott, and Jok Scott, callit *the Suckler*.

Dilaitit of the crewall and barbarus Slauchter of threſcoir ſcheip, or thairby, perteining to the Laird of Drumlangrig; committit vpone the Landis of Howpaſlot, in the moneth of Apryle laſt, conform to the Dittay following.

DITTAY *againſt George, Walter, Ingram, and Jok Scot, alias the Suckler.*

FORSAMEKILL AS, albeit be dyuerſe loveabill lawis and Actis of Parliament, it be expreſlie provydit, ſtatute, and ordanit, that all Slayers of Horſſis, oxin, or vther cattell and guidis,[1] ſall be eſtemit and pwneiſt as Thevis; as the ſaidis Lawis and Actis of Parliament in tham ſelffis proportis: Nochtwithſtanding quhairof, it is of verritie, that ſic is the perverſe diſpoſitioun of dyuerſe perſones, quha, preferring þair awin privat grudge, and revenge arryſing þairupoun, to

[1] Stock; sheep.

the dew reuerance and obedience of his Maiefteis authoritie and lawis, ceiffis nocht to profecute and follow furthe all godles and indirect meanis to effectuat þair malice, be fic monftruous and vnhard of crewaltie, as the lyk quhairof hes nocht bene hard amangift the *wyld Irifch* and favadge people, let be within any reformet and ciuile pairt of his Maiefteis dominionis: And namelie, the perfones perticulerlie aboue writtin, be the inftigatioun, na dout, of fum perfones of gritter qualitie and conditioun nor thame felffis, vpone confideratioun, that þe landis and leving of *Howpaflet* war deulie and lawfullie conqueift and acquyret be vmq[le] Sir James Douglas *of Drumlangrig, knycht*, and he þairby fetlet in poffeffioun þairof, be pleniffing of the famyn with his beftiall and guidis; thay and vtheris of þair vnhappie focieatie, altogidder difdaneing that þe faid *Laird of Drumlangrig* fould inioy or poffeffe ony landis or poffeffiones within that pairt of this kingdome; and þairfoir, plotting and devyfing all godles and vnlauchfull meanis how to interupt his peceable poffeffioun of the faidis Landis, and to lay the famyn waift, and þairby to mak thame vnproffitable to him and his pofteritie—in the moneth of Apryle laftbypaft, the faidis *George Scott, Walter Scott, Ingrem Scott*, and *Jok Scott*, callit *the Suckler*, haifing affemblit and convocat to thame felffis *Williame Scott*, callit in *Satchellis*, and vtheris, þair complices, ffirft keipit ane generall meitting within þe *Toun of Hawik*, quhair, in þair devillifche counfell, it was concludit and aggreit vnto amangis thame, that, within a fyve or fex dayis þairefter, they fould all meit togidder, vnder nycht, vpone the faidis landis of *Howpaflet*, and þair to flay and diftroy the faid *Laird of Drumlangrigis* haill beftiall and guidis being þairupoun: Lyk as, accoirding to the foirfaid damnable conclufioun, the faid *George Scott*, accumpaneit with the faid *Williame Scott*, callit of *Satfcheillis*, vpone the . . . day of þe faid moneth of Apryle laftbypaft, come, vnder filence and clud of nycht, fra the faid *Toun of Hawik*, to *Eilrig-burne-fute*, and the faid *Williame Scott* being than muffellit;[1] at the quhilk place, the faid *Jok Scott*, callit *the Suckler*, met with thame; and þairfra, thay thre paft vp the watter, be the fpace of thre quarteris of ane myle, to ane Cleuch,[2] callit *Birny-cleuche*, betuix *Eilrig* and *Howpaflet*; quhair, accoirding to þe former appointment, the faidis *Wattie* and *Ingrem Scottis* met with thame: ffra the quhilk place thay foure, accumpaneit with the faid *Williame Scott*, callit of *Satfchellis*, come to the faidis landis of *Howpaflet*; and þair, being bodin[3] with fuordis, bandit ftalffis, and vtheris wappones, provydit be thame for þe purpois, in ane Cleuch-fyde, quhair þe faid *Laird of Drumlangrig* his fcheip war lying in þair lairis,[4] maift barbaruflie and inhumanelie, as favadge and crewall beiftis, deftitute of naturale

[1] Disguised; *muffled*. Old Fr. *emmuselé*. [2] A rocky ascent, or cliff. It also signifies a cleft or hollow between precipitous banks, &c. [3] Furnished. [4] Beds; folds.

reafone, with þair drawin fuordis and vtheris wappones foirfaidis, ran throw þe haill flok of fcheip, flew, lamet, and menȝet[1] to the number of threfcoir of the faid fcheip, quhairof fouretie or þairby war flane, be ftreking of[2] þair heidis, and cutting thame in tua throw þair bakis; and the reft of thame, þair fpaldis[3] and legis wer ftrukin away fra thame in maift barbarous maner, and war fa left fpreuleing in þair deid-thrawis[4] vpone the grund of the faidis landis; committing þairthrow maift haynous and vnhard of Crewaltie and Oppreffioun: And the faidis perfones aboue complenit vpone, and ilk ane of thame, ar airt and pairt of the faidis crewall, monftrouous, and vnhard of crymes: ffor the quhilk, thay aucht and fould be pwneift be ane exemplarie pwneifchment, to the terrour and example of vtheris to commit the lyk heireftir.

THE VERITIE of þair giltines of the quilkis haynous crymes is cleirlie provin, be the TAIKINIS[5] following, viz. 1. BE the Depofitioun maid be þe faid *Jok Scott*, callit *the Suckler*, quha was fend for be THE LADY HOWPASLET to cum to þe *Toun of Hawik;* and at his cuming, haifing met with þe LADY, and with *Jeane Scott*, callit of *Satfchellis*, and with þe faid *George Scott*, callit *Mariones Geordie*, at þe *Croce of Hawik*, it was þair concludit amangis thame, that *the Laird of Drumlangrigis* fcheip fould be all flane: AND for that effect, accoirding to þe appointment than maid, a thre dayis þaireftir, *Jok the Suckler* come to *Eilrig-burne-fute*, quhair, in the glomeing,[6] he mett with the faid *Mariones Geordie*, and with *Williame Scott*, callit in *Satfchellis*, quha was with þame in companie; quhilk *Williame Scott* was than muffellit. Lyk as, at þe faid *George Scottis* defyre, the faid *Jok the Suckler* paft with ȝow and the faid *Willie Scott* vp the watter, the fpace of thre quarteris of ane myle, to ane cleuch callit *Birnie-cleuche*, betuix *Eilrig* and *Howpaflett*, quhair þe faid *Wattie Scott* and *Ingrem Scott* met with thame, the faid *Wattie* and *Ingrem* haifing plaidis and blew bonnettis: ffra the quhilk place thay paft togidder to *the lands of Howpaflet*, quhair the faid *Laird of Drumlangrigis* fcheip lay, and þair flew þame, in maner fpecifeit in þe Dittay and þe faid *Jok the Suckleris* Depofitioun.—2. To the taikin lykwayis, the faid *George Scott* perfaveing þat *the Suckler* wald nocht pas forwardis to the committing of the fact, he þairfoir drew his fuord, and þairwith thraitnet *the Suckler*, that gif he paft nocht with him and thair complices to þe deid, he fould hew *the Suckler* þairwith in peces.—3. LYK AS, in regaird of the former Depofitioun fa maid be *the Suckler*, the faid *George Scott* being prefentit befoir my *Lord Juftice Clerk*, my *Lord Aduocat*, and my *Lord Juftice*, and examinat þairupoun; the faid *George* was content to tak the giltines of þe faid cryme vpon him, gif *the Suckler* wald affirme the vereitie þairof, in his face:

[1] Maimed. [2] Off. [3] Shoulders. O. Fr. *espaule*. [4] Struggling in the agonies of death. [5] Tokens; proofs. [6] Twilight; after sunset.

Lyk as, the ſaid *George* and *the Suckler*, being confrontit, he ratifeit and renewit his former Depoſitioun and haill circumſtances þairof in the ſaid *George* face; and offerit to haif ſochin þe Singular Combat with the ſaid *George*, vpone the verritie þairof.—4. To the taikin lykwayis, þe ſaid *George*, haiſing ane dog named *Hyde-the-baſtard*, he being convenit at dyuerſe tymes with his companȝeonis, brak out in thir woirdis, ſaying, 'Sa lang as I and my Baſtard brother levis (meaning be his dog), *Howpaſlet* ſall nocht pleniſche.'[1]—5. To the taikin alſo, eftir þe ſlauchter of the ſaid ſcheip, the ſaid *George* being ſuſpectit þairof, and vrget be *James Douglas* to geve ane teſt,[2] quhair he was þat nycht of þe barbarous ſlaying of thame; becaus he could nocht geve þe ſaid teſt and cleir him ſelff þairof, he querrellit the ſaid *James Douglas* þairupoun, within the *Towne of Hawik*, and preſentit ane bendit[3] piſtolet to him, of purpois to haif ſlane him þairwith; quhilk he wuld half ſchote, gif he had nocht bene ſtayit be *James Weymes*, *Johnne Scott* callit *Bony Jony*,[4] and *James Lechen*, quha tuik þe piſtolett frome him.—6. To the taikin lyk wayis, the ſaid *George*, being examinat in þe premiſſes be þe ſaidis Lordis Examinatouris, vpone the xxviij of December laſt, and being demandit, quhair he was the tyme of the keiping of the Juſtice Court of Jedburgh? Declairit, that he come the day of the halding of the ſaid Juſtice Court to the Toun of Jedburgh, quhilk was vpone ane Thuriſday; and vpone the Tyſday and Wedinſday of beſoir, was alſo in Jedburgh, in maner ſpecifeit in his Depoſitioun: Lyk as, the ſaid *George* being removet for a tyme, and of new re-examinat, he was contrair to his former Depoſitioun, declairing, þat vpone the Sonday, Mononday, Tyſday, and Wedinſday befoir the Court, and vpone the Thuriſday, the day of halding þairof, he was within the *Town of Hawik*, accumpaneit with the perſones ſet down in his poſteriour Depoſitioune.—7. To the taikin alſo, the ſaid *Walter Scott*, at his cuming with *Jok the Suckler* to *Birniecleuche*, the ſaid *Jok the Suckler*, haiſing refuſet to pas forwardis with him to þe ſlaying of þe ſaid ſcheip, the ſaid *Walter*, nochtwithſtanding his refuiſeall, earneſtlie delt with him to cum fordwardis, ſaying to him, 'Jok, thow art als giltie alreddie as thow canſt be, cum fordwardis þairfoir with ws to the deid; and þaireſtir, thou ſall gang with us *Northe*, quhair we will be weill trett and interteneit; for we haif ane place prepairit for our reſſett.'[5]—8. To the taikin lyk wayis, the ſaidis *Walter* and *Ingrem Scottis*, the tyme of þair lait apprehending in þe *Northe*, being inquyret, gif ony of thame knew *Jok the Suckler*? Thay denyit to þair takeris[6] that evir thay knew him: Bot being brocht to waird to þe *Tolbuth of Ed^r*, quhair þe ſaid *Jok* being preſentit to

[1] Shall not be stocked. [2] Proof or testimonial. [3] Cocked. [4] *Bonny*, or handsome, Johnnie. [5] Reception and concealment. [6] Examinators.

thame, thay nocht only knew, bot be his name aſkit him ſaying, 'Quhat now, *Jok!* How come thow heir—and quhairfoir ar thow wairdit[1] in this hous?' SA that be þe taikinis aboue written, þe ſaidis perſones giltines of the ſaid fact is cleirlie provin.

PERSEWARIS, Williame Douglas of Drumlangrig, Sir Williame Oliphant of Newtoun, kny[t], Aduocat.
PRELOCUTOURIS in defence of George, Wattie, and Ingrem, allenarlie,
Mr Thomas Nicolſonn, Laurence Scott, Adame Cunninghame, Aduocattis.

Efter reiding of the DITTAY ſet doun in the ſummondis, at command of my Lord Juſtice and Aſſeſſouris, it is declairit be Mr Thomas Nicolſoun, as prelocutour for George, Walter, and Ingrem Scottis, that he acknowlegis the cryme ſet doun in the Dittay to be haynous and worthie of condigne puneiſchment; bot as to the Dittay it ſelff (nocht granting the cryme thairin mentionet to be of veritie) againis the pannell, alledgis the ſamyn is nawayis relevant to pas to the knawlege of ane Aſſyſe; nather can the committing of the fact lybellit infer daithe, becaus the grund and fundatioun thairof is vpone tua Actis of Parliament, the firſt quhairof is the 100 Act of his Maieſteis ſevint Parliament, haldin in October 1581, quhilk is only extendit agains the flayeris and hocheris[2] of horſſis, oxin, and vther cattell, the tyme of laubouring the grund; and the vther Act is the 82 Act of his hienes ellevint Parliament, haldin vpone the xxix of July 1587, quhilk is only ane Ratificatioun of the firſt: Bot the Dittay beiris only the Slauchter and Hocheing of ſcheip, quhilk is nawayis expreſſit nor prohibeit be the ſaidis Actis: And, thairfoir, the Dittay and Actis of Parliament being diſconforme, the ſamyn can nawayis pas to ane Aſſyſe; ſpeciallie, in reſpect na penall Statute may be forder extendit nor[3] the ſamyn is ſet doun *per expreſſum:* quhilkis Actis he deſyret to be red.

It is anſuerit be my Lord Aduocat, that the mynd and intentioun of the lawis, and making thairof, man[4] be advertit vnto, quhilk is the puneiſchment of all haynous and deteſtable crymes, committit be quhatſumeuir way and be quhatſumeuir perſone: ffor, als it is eſtemit ane haynous cryme, be the ſaidis Lawis, to hoche ane ox or ane horſe, ſa the cryme is far moir haynous to flay and cut af ane haill flok of four or fyve ſcoir ſcheip, and thairby to diſpleniſche and lay waiſt ane gentilmannis poſſeſſioun and rowme; quhilk the haill lawis and Actis of Parliament, vnder the name of 'vther cattell,' expreſslie forbidis, and concludis puneiſchment agains the committeris: In reſpect quhairof, the Dittay is maiſt relevant to pas to ane Aſſyſe, nochtwithſtanding of the allegeance aboue writtin.

THE JUSTICE Repellis the allegeance; and ffindis the Dittay relevant to pas to the knawlege of ane Aſſyſe. Quhairupone the Aduocat aſkit Inſtrumentis.

[1] Imprisoned. [2] Hamstringers. [3] Than. [4] Must.

Assisa.

Thomas Wauche of Schawis,
Johnne Coluile in Preiſtoune,
Gilbert Greirſoun of Beochane,
George Lyell in Spachhouſſis,
Malcolme Dalrumpill of Watterſyde,
Robert Hunter in Halywoid,
Rodger Padzeane of Newtoun,
Thomas Greirſoun of Barjarge,
Archibald Menzeis in Enoche,
Patrik Hair in Glenquhirrie,
Rob. Phillope, burges of Dumfreis,
Adame Trumhle in Lyntlawis,
Peter Broun in Duriſdeir,
Johnne Mcmorrane of Glaſpene,
James Williameſone in Craufurdtoune.

Objections *againſt certain Aſſiſors paſſing upon the Inqueſt.*

It is allegit aganis *Thomas Wauche,* that he can nocht be reſſauit vpone this Aſſyſe, becaus he duellis nocht within the foure-halfis-about. Anſueris, aucht to be repellit, in reſpect he duellis within the Kingdome of Scotland, and he is ſummond to pas vpone the tryall of ane haynous cryme.—The Juſtice admittis him vpone the Aſſyſe.

It is allegit aganis *Johnne Coluile,* that he can nocht pas vpone this Aſſyſe, becaus he is tennent to *my Lord of Angus,* quha is cum to Edr at the deſyre of *the Laird of Drumlangrig* to aſſiſt this perſute. Anſueris, aucht to be repellit, in reſpect the Erle of Angus nocht preſent, nather as perſewer or defender.—'Admittis.'

It is allegit aganis *Gilbert Greirſoun,* that he can nocht be admittit, becaus he is tennent to *the Laird of Lag,* quha is preſent at the bar, aſſiſting the Laird of Drumlangrig in this perſute. Anſueris, aucht to be repellit, in reſpect he is ane fewar and na removeable tennent.—The Juſtice, vpone the geving of Gilbert Greirſones ayth, that he is ane ffewar, and that he gaif na partiall counſell, in preiudice of the pannell, admittis him vpone this Aſſyſe.

It is allegit aganis *Robert Phillope,* that he can nocht pas vpone this Aſſyſe, becaus he is the Laird of Drumlangrigis penſioner.—The Juſtice, in reſpect of Robert Phillipis ayth, gevin be him, that he is nocht Drumlangrigis penſioner, and that he hes na guid deid of him, bot as ane vther gentilman of the cuntrie reſpectis and honouris him, Reſſaues him vpoun the Aſſyſe.

It was, eftir his admiſſioun and reſſaueing, allegit be Lanrence Scott, in name of the pannell, that *Robert Phillope* can nocht pas vpone this Aſſyſe, becaus he is Bailzie Clerk to the Laird of Drumlangrigis Regalitie. Anſueris, he can nocht be declynet nor put af the Aſſyſe, eftir his ayth tane, and purgatioun of partiall counſall; ſpeciallie, ſeing it is vpone tryell of ane cryme, quhilk is *factum obſcurum et clandeſtinum.*—The Juſtice ordanis him to remane ane Aſſyſour.

Thaireftir, the Dittay being of new red, in preſens and audience of the Aſſyſe, with the Taikynes producet be the perſewer for verificatioun thairof, it is allegit be Mr Thomas Nicolſone, in name of *George Scott, Walter* and *Ingrem Scottis,* that the Taikynnis producet and red for cleiring of the Dittay, ſould nawayis be reſpectit be the perſones of Inqueiſt, nather ar the ſaidis Taikynnis concluding argumentis to verifie the Dittay. And *ffirſt,* the Depoſitiones maid be *Jok Scott,* callit *the Suckler,* ſould nawayis be reſpectit, becaus he being apprehendit for the ſamyn fact, and haiſing confeſſit him ſelff to be *ſocius eiuſdem criminis,* his Depoſitioun can nocht work aganis ony honeſt man quha is innocent; and thairfoir ſould nocht be reſpectit. *Secundo,* as to the Taikin foundit vpone *George Scottis* dog, albeit the ſamyn be na grund to infer the Slauchter of the ſcheip lybellit, zit he denyis it. *Tertio,* the Taikin for ſlaying and querrelling of *James Douglas* inferris nathing; becaus he was nocht bund to confeſs or ſchaw him any teſt quhair he was the nycht of the ſlaying of the

ſcheip; and as to the Taikin it ſelf, denyis the ſamyn. *Quarto*, concerning his Depoſitioun maid be him, quhair he was the tyme of the Juſtice Court of Jedburgh; the ſamyn inferris nathing for probatioun of the Dittay; And as to his contrair Depoſitioun, that he was in Hawik, it can nawayis infer him to be culpable of the cryme. And allegis, that the haill former Taikynnis previs na thing aganis *Walter* and *Ingrem Scottis*. *Item*, the laſt taikin anent *Walter* and *Ingrem*, that thay war tryet the tyme of thair taking, gif thai knew *Jok the Suckler*; thair granting or nocht granting thairof can nawayis infer thame to be giltie of the fact.

THE *Laird of Drumlanerig*, being ſuorne, and his aithe tane thairof, gif[1] he hes juſt cauſe to perſew the pannell for the crymes contenit in the Dittay, as giltie and culpable thairof? Declairit, that this Dittay is ſuorne to him to be of verritie, be honeſt and credible men, viz. that *George*, *Walter*, and *Ingrem* war thre of thame that was at the ſlauchter of his ſcheip, in maner ſpecifeit in the Dittay: And thairfoir, be his ayth, declairit that he hes juſt caus to perſew thame, as doaris of ſic ane odious fact. And as to *Jok Scott*, callit *the Suckler*, he hes alſo hard of his meitting and keiping tryſtis with thame in that matter; bot, in reſpect he is nocht certanelie informet that he was at the doing of the deid, he can nocht perſew him as ane principall committer: And finallie, declairit, that gif he war nocht perſuaidit, in his conſcience, that the ſaidis *George*, *Wattie*, and *Ingrem Scottis* war the ſpecial ſlayeris of the ſcheip, (be quhais directioun the ſamyn was done, remittis that to thame ſelffis,) he wald nocht haif followit thame thairfoir.—Quhairvpone my lord Aduocat aſkit inſtrumentis.

My Lord Aduocat, for preving of the Dittay, repeittis *the Laird of Drumlangrigis* ayth and Declaratioun: Producet the Depoſitiones of *Jok Scott*, callit *the Sukler*; and repeittis his ratificatioun thairof in judgement, and conſtant affirmatioun of the veritie thairof in the vtheris thre faces:[2] And lykwayis, repeitis the Actis of Parliament red, quhairvpone the Dittay is foundit: And deſyres the Aſſyſe to conſidder the haynouſnes of the cryme; and Proteſtis for Wilfull Errour aganis thame, gif thay Acquit the pannell thairof.

VERDICT. The Aſſyſe, all in ane voce, be the mouthe of the ſaid Thomas Wauche of Schawis, chanceller, ffand, pronuncet, and declairit the ſaidis *George Scott*, *Walter Scott*, and *Ingrem Scott*, to be ffylet, culpable, and convict of the actual ſlaying of the ſaid Laird of Drumlangrigis ſcheip, in maner ſpecifeit in the Dittay: AND ſiclyk, ffand, pronuncet, and declairit the ſaid *Jok Scott*, callit *the Sucler*, to be Culpable, ffylet, and convict of being vpone the counſell and foirknawlege of the fact aboue writtin, and in keiping of dyuerſe tryſtis and meattingis with the vther thre, conforme to his awin Depoſitioun: And Clengis

[1] If. [2] When confronted with them.

him of the actuall deid, be fleing away fra the doing thairof, befoir it was committit.

Sentence. The Juſtice, be the mouth of Johnne Dow, dempſter of Court, Decernit and Ordanit the ſaidis *George Scott*, *Walter Scott*, and *Ingrem Scott*, to be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis and geir to be eſcheit and inbrocht to his Maieſteis vſe, as culpable and convict of the crymes aboue ſpecifeit. And lykwayis, Ordanit the ſaid *Jok Scott*, callit *the Suckler*, to be tane bak to waird, thair to remane vnto the tyme he (the Juſtice) be advyſet with the Lordis of Secreit Counſall, anent his dome.[1]

APPENDIX illustrative of the preceding Trial.

I. Letter, *the Laird of Drumlanrig to Murray of Lochmaben.*[2]

Richt worthie and lowing Brother,

ȝe remember, in on of my former Letteres, I ſchew ȝow, þat I had gotin ſum tryall[3] of that uyld and barbarous uillanie quhilk was comitit, in þe ſlaying of my ſcheip, quhen I was laſt at Court; quhairin I did than write þe more ſpairinglye, being lothe (in reſpect of ȝowr griter affaires) to trubill ȝow with it, till I had brocht it till ſum further cleirnes; quhilk now I have done, and hes tuo fallowis preſentlie in hand þat war actoris in it; þe on callit *Jok Scott the Sukler*, quho hes confeſſit þe ſimpell treuth, in all poyntis, both of his auin pairte, and þe reſt þat war with him at þat filthie actioun; to wit, *Geordie Scott the Soutor*, callit *Mariounes Geordie*, *Watt Scott*, callit *Braidis Wattie*, *Willie Scott*, callit of *Satchelis*, and *Ingrum Scott*. This *Suceler*, in his Confeſſioune, he condiſcendis cleirlie both vpoun þe tyme, place, and forme of thair meiting and pairting, with all wther takinis and circumſtances þat paſt amongſt thame, quhen they war togidder (as his Depoſitioun beiris.) Nochtwithſtanding this vther, callit *Geordie Scott the Souter*, (quhom I have alſo in handis,) ſtandis ȝit to his denyall, altho they be many grit preſumptiounis of his guiltineſs; aluayis[4] *the Suckler*, being ſundry tymes examinat and confrontit with him befoir the Lordis of Counsall, he abydis conſtantly at everye poynt of his firſt Confeſſioun; and offeris, nocht only to fecht *the Souter* on it, bot all þe reſt, everie on of thame efter another, quhenſoeuer they can be had, gif it will pleis his Matie and the Counsall to ſuffer him. The vther thrie ar fugitiues for that and vther crymes of Thift and Slauchter; and, as I wnderſtand, ar all out of the countray, ſum in *Irland*, and ſum ellis quhair; vtherwayis, befoir this tyme, I think I had fund meanis to haue gotin thame in handis, (ȝit according till our auld Scottis proverb, 'Ane ȝule feiſt may be quat at Paſe!' Quhen perhapis they may imagin it be forgot.) In the meintyme, let me intreit ȝow, þat ȝe will do me that fauowr to motioun this maiter to his Matie, quhairby I may have it, by his Letter, recommended to þe Counſall, nocht only for þe exact tryall and puniſchment thairof to þe daithe, for þe wrang that is alredie done, bot alſo to terrifie all other malefactoris from attempting þe lyk heirefter; quhilk, I proteſt to God, I ponder more in reſpect of þe preparatiue and conſequens þat may follow thairvponn to þe preiudice of þe comounweill of þe countray, in cais it be lichtlie paſſit over vnpuniſchit, than for any particular of my awin. Now, gif ȝe find it expedient, it war nocht amis, ſeing the *Shanſler*[5] and *Secretar*[6] (quha knawis þe

[1] It is likely that the Suckler had been promised his life, when he turned informer; but being a most dangerous character to turn loose on society, the public prosecutor appears to have been instructed by the Council to rake up a few of his former misdeeds, and have him cleverly put out of the way. See the following Case, Jun. 21, 1616.
[2] From the Original, preserved among the *Denmylne MSS.* Adv. Library. [3] Proof; evidence. [4] Nevertheless.
[5] The Lord Chancellor, Alexander Earl of Dunfermline. [6] Thomas Earl of Haddington.

haill eſtate and progreſs of this buſſines) ar to be with HIS MA^TIE at Court, that ȝe ſould haue thame neir-hand by, quhen ȝe propoun it to HIS MA^TIE at Court, in eais he hapin to deſyre thair opiniounn in it. And this, I wald beſeik ȝow to do with all þe conuenient haiſt ȝow can, þat I may have ȝowr anſuer with HIS MA^TIES Letter beſoir þe ſeuinth or aucht of þe nixt month, becaus I do intend, God willing, at þat tyme, to have thir tuo fallowis, at leiſt on of thame, put to the tryall of ane Aſſyſe; at quhilk tyme (if nocht beſoir thane) I do aſſuir my ſelf þat God ſall mowe þe hart of him quho ſtandis moſt obſtinatlie to his denyall, euin to confeſs the treuth, as þe other hes done: albeit thair be ſum buſſie-headit men heir, quhom I will nocht name at this tyme, þat wald wis þe contrair; and ar deiling, be all meanis poſſibill, ſo far as in thame lyis, to þat effect; bot be þe grace of God, and HIS MA^TIE fauowr, with ȝowr help, I howp to diſapoynt þame. As for the reſt of my particularis, I truſt ȝow will nocht be forgetfull of thame; and when ȝow find ȝowr auin tyme, will let me knaw, þat I may luik for in þame. So I hawe no more to ſay, bot alwayis efter on[1] I reſt,

ȝowris in quhat I can to ſerue ȝow,

EDINBURT, the vi day of Januar, 1616. DRUMLANGRIG.

ȝow will do me þe fauowr to preſent my humbill ſeruice to ȝowr lady.

To his muche honoured and worthie broþer JOHNE MURRAY of Lochmaben, Grume of his Ma. Bed-chamber, Thes.

II. "CONTRACT BETUIX THE SCOTTIS AND THE KERRIS."

(IT has already been noticed, in the Introduction to the present Trial, that the Editor has been fortunate enough to discover the Original BAND or CONTRACT referred to by *Sir Walter Scott*, preserved in Record of Deeds,[2] Mar. 23, 1564. This remarkable and interesting document is preceded by a solemn entry in the Register, in these words. "In presens of the Lordis of Counsale, compeirit (SIR) WALTER SCOTT *of Branxholme*, with his Curatouris vndirwrittin, personalie, except ane nobill and myehté lord, *James Duke of Chatteaulrault*, quha compeirit be *Maister Dauid Borthuik*, his procuratt, one that ane pairt; and SIR WALTER KER *of Cesfurde, knyt*, for him self, and takand the burding vpoune him for his barnis, and the remanent of his kynd frendis, specifeit and contenit in the Contract vnderwrittin, personalé, on that vther pairt; and gaif in the samyn, subscriuit with thair handis, as followis; and desirit the samyn to be insert in the Bukis of Counsale, and to haue the strenth of ane Act and Decreit of the Lordis thairof, and thai to interpone thair auctoritie to the samyn," &c.

It is only necessary, farther, to refer the reader to the valuable annotations of *Sir Walter Scott*, appended to 'The Lay of the Last Minstrel,' for a perfect knowledge of the deadly Feuds which had so long raged between two of the greatest Border Families, the SCOTTS and KERRS, to 'staunch' which was the professed object of the present BAND.)

AT EDINBURGHE, þe xxij day of Marche, the ȝeir of God I^m.V^c.lxiiij ȝeiris. IT is appointit, aggreit, and finalé concordit, betuix rycht honorabill menne, SIR WALTER KER OF CESFURDE, KNYT,[3] for him ſelf, and takand þe burding vpoune him for his barnis,[4] and for his bruder *Mark Commendater of Newbottle*, and his barnis; *Johnne Hume of Coldenknowis*, and his bairnis; *Andro Ker of Fawdounſyde*, his bairnis and breder;[5] *Thomas Ker of Marſingtoun*, his fader-bruder,[6] and pair bairnis; *George Ker of Lyntoune*, his bairnis, his oyis,[7] and bruder-bairnis;[8] *Richard Ker of Gailſchaw*, his bairnis and breder; *Andro, Williame*, and *Johnne Kerris*, brether to *Sir Thomas Ker of Pharnyhirſt, knyt*; *Mark Ker of Kippeſchaw*, and his ſone *Robert Ker* of Bothtowr; *Robert Ker* elder, burges of Edinburgh; and all vperis þair barnis, brether, kynne, freindis, menne, tennentis and ſervandis, except þe freindis vnder ſpecifeit, nocht comprehendit vnder þis appoyntment, one þat ane pairt; AND WALTER SCOTT OF BRANXHOLME AND BUKCLEUCH,[9] with conſent and aſſent of ane rycht michté

[1] Always after one; steady; unchangeable. [2] General Register House, Vol. VII. fol. 131. [3] Ancestor of the Ducal Family of *Roxburghe*. He married *Isabel*, daughter of *Sir Andrew Kerr of Fernihirst*. [4] Children. [5] Brothers. [6] Uncle. [7] Grandchildren. [8] Nephews and Nieces. [9] He married *Lady Margaret Douglas*, eldest daughter of *David*, seventh *Earl of Angus*, niece of the Regent Morton. This great man died Apr. 17, 1574. It was his son who performed the matchless exploit of relieving *Kinmont Will*, Apr. 13, 1596, from the Castle of Carlisle, being accompanied with a mere handful—only 200 horse!

and noble lord, *James Duike of Chattcaularault, Erle of Arane, Lord Hammiltoune*, &c.; *Sir Johnne Maxwell of Terreglis, kny*[t]; *Sir Johnne Bellendene of Auchnoule, kny*, Justice Clerk; *Maister Johnne Spens of Condé*, Aduocat to our sonerane Lady; *Andro Murray of Blak-Barony, Michell Balfour of Burlye, Thomas Scott of Haning*, and *Robert Scott of Thirlstane*, Curatouris to þe said Walter, for þair interes, for him self, and takand þe burding vpoune him for his haill Surname, and þe Relict and bairnis of vmq[le] *Sir Walter Scott of Branxholme, kny*[t], his gudeschir,[1] and als for *Williame Cranstoune of that ilk*, his bairnis and breder, the brether of vmquhile þe *Laird of Chisholme; Johnne Glaidstanis of that ilk*, and his bernis; *James Langlandis of that ilk*, and his bairnis; *Walter Vache of Syntoun*, and his barnis; and for *James Ormistoun of that ilk*, conditionally, as followis; and als, for all vþeris his kynne, freindis, servandis, menne, tennentis, assistaris, and pairtakeris, one þat vþer pairt; in maner, forme, and effect, as efter followis. That is to say, þe said Lard of Bukcleucht, nor na vþer for quhome he takis burding, as said is, sall ony way persew þe said Lard of Cesfurde, nor na vþer comprehendit vnder þis present appointment, criminalé nor civilie, for ony Slauchter or blude committit in tyme bipast, and is content to be perpetuallie secludit þairfra, *per pactum de non petendo;* and sall neuer move actioun, beir hatrent, grudge, or displesfour þairfor, bot bury and put þe samyn vnder perpetuale silence and obliuioune; and to leif in persite amité, lufe, and Cristiane nychtburheid, in all tymes cuming. Providing alwayis, þat heirby þat þe said Lard of Bukcleucht, and all vþeris quhame he takis burding, be na wayis preiugit anent þair actionis quhatsumeuir þat þai haif intentit or may intent aganis *Sir Thomas Ker of Phairneyhirst, kny*[t], *Sir Andro Ker of Hirsell, kny*[t], *Robert Ker of Woidheid, Johne Haldane of that ilk, Gilbert Ker of Prymsydloch, James Ker of Torbet, Robert Ker of Gradene, Andro Ker of Hietoune*, þair barnis, brether, and seruandis, and all vþeris þat ar nocht comprehendit vnder þis appointment; bot þat þai may persew and obtene þe samyn as þai think maist expedient, be þe law; and þat becaus þe saidis personis, being requirit be þe said Lard of Cesfurde to cum with him, and to do þair devore, for þair pairt of þis appointment, hes refusit to do þe samyn; and als, becaus þat in þis present appointment, þair is na proffett nowther gevin nor takin, quhairby þe said Lard of Bukcleucht, and his frendis and vþeris foirsaidis, ar preiugit anent þair saidis actionis; and þat it is þe express mynd of all þe pairteis presentlie contractaris, þat þe samin be fullelie reservit: And siclyk, vpone þe vþer pairt, þe said Lard of Cesfurde, nor na vþeris quhome-for he takis þe burding, sall in ony wyise persew þe said Lard of Bukcleucht, nor na vþeris his kynne, freindis, servandes, menne, tennentes, assistaris, or pairt-takaris, criminalé or civilé, for ony slauchter or blude committit in ony time bipast; and is content to be perpetuallie secludet þairfra, *per pactum de non petendo;* and sall nevir move actioun, beir hatrent, grudge, or displesfour þairfoir, bot bury and put þe samyn vnder perpetuall silence and obliuioune, and to leif in persite amité, lufe, and Cristiane nychtbourheid, in all tyme heirefter. Attour, it is heirby expresslie and faythfullie contractit, þat for mair suir removeing, stenching,[2] and away-putting of all inymité, hatrent, and grudge, standand and consavet betuix þe saidis pairteis, throw þe vnhappie slauchter of þe said vmq[le] *Sir Walter Scott of Branxholme, kny*[t],[3] and for þe better continuance of amité, favour, and freindschip amangis þame in tyme cuming, the said Sir Walter Ker *of Cesfurde, kny*[t], sall, vpoun the xxiij day of Marche instant, cum to the Parroche Kirk of Edinburcht, now commonelie callit Sanct Geillis Kirk, and þair, befoir none, in sycht of þe pepill present for þe tyme, reuerently vpone his kneis ask God mercy of þe slauchter foirsaid; and siclyk, ask forgevenes of þe same fra þe said Lard of Bukcleucht, and his freindis, quhilkis salhappin be þair present; and þairefter promise, in þe name and feir of God, þat he and his freindis sall trewlé keip þair pairt of þis present Contract, and sall stand trew freindis to þe said Lard of Bukcleucht and his freindis, according heirvnto, in all tyme cuming. The quhilk þe said Lard

[1] Grandfather. [2] Staunching; extinguishing. [3] This great man was unhappily slain on the streets of Edinburgh, in October, 1552. To pave the way for a lasting reconciliation between the Clans, a Remission was granted to Sir Walter Kerr of Cessfurd, and to John Kerr of Fernihirst, under the Great Seal.

of Bukcleucht fall reuerentlé accept and reſſaue, and promiſe, in þe feir of God, to remit his grudge, and neuer remember þe ſame; bot ſall obſerve and fulfill his pairt of þis preſent Contract to þe ſaid Lard of Ceſfurde, according to þe tennour þairof, ſiclyk, in tyme cuming. And als, *Thomas Ker*, ſecund ſone to þe ſaid Lard of Ceſfurde, ſall, God willing, ſolempnizate and compleit þe band of matrimony, in face of Chriſtis Congregatiounne, with . . . . . *Scott*,[1] ſiſter to þe ſaid Laird of Bukcleucht, betuix þis and þe laſt day of Maij nixttocum, but ony tocher[2] to be payit be hir ſaid bruder, or ony vþer freindis with hir: And þe ſaid Lard of Ceſfurde ſall provide þame ane honeſt and reſſonable ſuſtentatiounne and leving, efferand[3] to þair eſtait and conditiounne; and als, ſall cáus þe ſaid . . . . . be infeft in her virginité, in coniunct-fee or lifrent, with hir ſaid future ſpons, and þair airis lauchfullie gottin or to be gottin betuix þame, quhilk ſailȝeing, þe ſaid *Thomas* airis quhatſumenir, in all and haill landis or annualrent of þe availl of ane hundreth merkis be ȝeir, to be haldin of þe Superiour be Reſignatiounn or Confirmatiounne, at þe pleſour of hir ſaid bruþer; and paireftir, þe ſaid . . . . . to be infeft in coniunct-fee or lyfrent with hir ſaid future huſband, at his and his ſaid faderis gude will and pleaſour, in ſik landis and leving as þai pleis mak hir; quhilk is referrit in þair will. And ſiclyk, *George Ker*, eldeſt ſone and apperand air to þe ſaid *Andro Ker of Fawdounſyd*, ſall, God willing, ſolempnizeat and compleit þe band of matrimony, in face of Chriſtis Congregatiounne, with *Jonett Scott*, ſader-ſiſter to þe ſaid Lard of Bukclewcht, ſa ſone as þai ſall be of perfyte age and habilitie for mariage, but payment of ony tocher to be payit be him, or vþer hir freindis with hir. And gif it ſall happin þe ſaid *George* to deceis, befoir þe compleiting of þe ſaid mariage, þan and in þat cais, his nixt bruþer þat ſalhappin to appeir or ſucceid air to his ſaid fader or him, ſall marie the ſaid *Jonet*, tocher-fré; and ſiclyk, ſailȝeing of hir be deceis, befoir þe ſaid mariage, þan and (in) þat caiſe þe ſaid *George*, and ſailȝeing of him be deceis, his nixt bruþer foirſaid, ſall ſolemnizeat and end mariage with hir nixt ſiſter þat ſalhappin þan be alyve, tocher-fré; and ſua, ſalang as þe ſaid *Andro* ſall haif ane ſone, and the ſaid *Jonet* ane ſiſter, þe ane to marie þe vþer tocher-fré, as ſaid is; ay and quhill mariage be anis complete amangis þame: And gif (it) ſalhappin þe ſaid mariage to ſailȝie in þe ſaidis *Georgis* or ony vþer his brederis defalt, þan and in þat cais, þe ſaid Lard of Ceſfurde, be the tennour heirof, obliſſis him and his airis to pay and deliuer the ſowme of ane thouſand merkis to þe ſaid *Jonett*, or to hir vþer ſiſter to quhome þe ſaid mariage ſall ſailȝé, within xl dayis nixt eftir þe ſaid ſailȝé be knawin. Attoure, becaus þe ſaid Lard of Ceſfurd hes ofbeſoir requyrit and deſyrit, vnder þe forme of inſtrument, *Sir Thomas Ker of Pharnyhirſt, kny*[t], *Sir Andro Ker of Hirſell, kny*[t], and *Gilbert Ker of Prymſydloch*, for þame and þair freindis to adheir, concur, and aſſiſt to him in þis preſent aggreance, and þat þai haif refuſit þe ſamin, as is aboue writtin, thairfoir þe ſaid Lard of Bukclewcht, nor his airis, ſall nocht aggré with þame, or ony of þame, by[4] þe awyſe of þe ſaid Lard of Ceſfurd and his airis; and gif it ſalhappin þe ſaid Lard of Bukclewcht, or his airis, to aggré with þe ſaidis *Sir Thomas*, *Sir Andrew*, and *Gilbert*, or ony of þame, by[4] þe awyſe of þe ſaid Lard of Ceſfurd, befoir þe completing of mariage betuix þe ſaid *George* or ane of his brethir with the ſaid *Jonet* or ane of hir ſiſteris, as ſaid is, without þe ſaid Lard of Ceſfurde be previe and conſent þairto, than and in þat cais, þe ſaid *George*, nor nane of his brethir, ſalbe haldin or aſtrictit to compleit þe ſaid mariage, bot ſalbe fré þairof; nochtwithſtanding þis preſent Contract, and ſiclyk as gif the ſamyn had neuir bene maid. And lik wyiſe, gif it ſalhappin þe ſaid Lard of Bukclewcht to aggré with þe ſaidis perſonis, or ony of þame, eftir þe completing of þe ſaid mariage betuix ony of þe ſaid *Androis* ſonis and þe ſaid *Jonet*, or ony hir ſiſteris, by[4] þe avyiſe of þe ſaid Lard of Ceſfurde, than and in þat caiſe, þe ſaid Lard of Bukclewcht obliſſis him, with auiſe of his Curatouris foirſaidis, to content

[1] Janet, the eldest sister of Sir Walter Scott of Buccleuch, was married to *Sir Thomas* Kerr of Fernihirst, in *anno* 1569; 2. Margaret, to Sir John Johnston of that ilk; 3. Elizabeth, to 'the Captain of Crawford,' Sir John Carmichael of Meadowflat.—*Wood's* and *Crawford's Peerages*. [2] Without any dowery or marriage-portion. [3] *Effeiring*; corresponding. [4] Without; contrary to; independent of.

and pay to þe ſaid Lard of Ceſfurde þe ſoume of ane thowſand merkis, as for þe tocher of þe ſaid *Jonet*, or ony vþer her ſifter þat hapnis to be neareſt, within xl dayis nixt eftir þe ſaid aggreance, gif it happynnis to be maid, as ſaid is; but[1] ony exceptioune or remeid be vertew of þis preſent Contract, quhairby þe ſaid mariage ſuld be tocher-fré, as is aboue ſpecifeit, to be proponit or allegeit in þe contrar. Providing alwayis, þat gef þe ſaid Lard of Bukcleucht aggré with þe ſaidis *Sir Thomas*, *Sir Andro*, and *Gilbert*, or ony of þame, with auiſe of þe ſaid Lard of Ceſfurde, than and (in) þat cais þe ſaid Lard of Ceſfurde ſall not laubour nor deſyre þat þair offeris, ellis[2] offerit, be diminiſſit, bot rather þat þai be augmentit. And ȝit, mairouer, becaus þair is particularelie deidlie Feid and actionis betuix þe ſaid Walter Ker of Ceſfurde, *knycht*, and þe ſaid *James Ormſtoune of that ilk*, thairfoir þai ſalbe compromittit[3] in *Dauid Spotiſwod of that ilk*, and *Thomas Hoppringill of that ilk*, to be choſin for þe pairt of þe ſaid Lard of Ceſfurde; and in *James Langlandis of that ilk*, and *Nicholace Ruperfurde of Hundley*, *knycht*, to be choſin for þe pairt of þe ſaid *Lard of Ormſtoune*; and in odmanne and ourmanne,[4] in caiſe of vareance or diſcord betuix þe ſaidis Jugis, to be commonelé[5] choſin be bayth þe ſaidis Lardis of Ceſfurde and Bukcleucht, anent þe taking, be þe ſaid *Lard of Ormſtoune*, of þe *landis of Nether Ancrome* and *Bailleie* þairof, in Tak, our þe ſaid Lard of Ceſfurde heid, it being his kyndlie rowme[6] of beſoir, as he allegis; and anent þe ſlauchter of vmq[le] . . . . *Beſt*, ſervand to þe ſaid Lard of Ceſfurde: And als, anent all vþer materis, actiones, querrellis, and debeittis betuix þame; and þai to be bund to abyde at þe decreit and ſentence of þe ſaidis Juges and ouermanne, or maiſt pairt of þame, deliuerand in þe ſaidis materis, quhilkis ſalbe haldin to deliuer þairin, betuix þis and þe firſt day of Auguſt nixtocum; and ane compromit[7] to be maid þairupone, and extendit in ampill forme, as vſe is in ſic caiſſis. And gif it ſalhappin þe ſaid *Lard of Ormſtoune* to reclame fra þe Decreit to be gevin be þe ſaidis Jugis and ouermanne, or maiſt pairt of þame, and nocht to abyde þairat, and fulfil his pairt þairof, as he ſall be ordanit be þe ſame, than and in þat caiſe, þe ſaid Lard of Bukcleucht ſall refuſe him, and ſall nowther manteine, fortifé, nor aſſiſt him þairefter, in ony tyme cuming; bot ſall tak pairt and fortifé, in honeſt and leſum[8] maner, with þe ſaid Lard of Ceſfurde, in his contrar. And gif þe ſaid Lard of Ceſfurde ſalhappin to reclame fra þe ſaid Decreit to be gevin as ſaid is, than and in þat caiſe, þe ſaid Lard of Bukcleucht ſall tak pairt with þe ſaid *Lard of Ormſtoune*. And finalé, þe ſaidis pairteis, be þe tennour heirof, bindis and obliſſis þame and þair airis, þat þai and perſonis abouewrittine, for quhame þai haue takin burding, reſpectiué, for þair awin pairtis as ſaid is, ſall in all tyme cuming keip and retene amité, freindſchip, luſe, favour, and kyndnes, ilkane to vþeris,[9] without ony grudge, or occaſioune to be mouit in þe contrar, be þame or ony of þame, to vþeris,[10] be ony maner of way, in tyme cuming. And gif it ſalhappin ony contraverſé or pley to ſall betuix ony of þe freindis abouewrittin, comprehendit vnder þis preſent Contract, for taking of vþeris ſteding or rowme,[11] owther in tyme bigane or tocum, thanne and in þat caiſe, þe mater ſalbe firſt ſchawin to þe ſaidis Lairdis of Ceſfurde and Bukcleucht, be quhais aviſe þe ſaidis pairteis ſal cheis[12] foure frendis, with ane ouermanne as þai can aggré one, for ending and deciding of þe ſaid contraverſé; and gif þe pairteis can nocht aggré one þe ſaid ouerman, þan and (in) þat cais þe ſaidis Lardis of Ceſfurde and Bukcleucht ſall cheis ane ouermanne quhame þai can aggré one; quhilk ouermanne being choſin be þame, it ſall nocht (be) leſum to þe pairteis to refuſe him, bot to approve and chuſe him: and gef þe ſaidis Lardis can nocht aggré one þe ſaid ouerman, than and in þat cais, þai ſall huimlé ſwte[13] and deſyer þe Quenis Maieſtie and Counſale to cheis ane ouermanne; quha being choſin, þe pairteis ſalbe haldin and bund to ſtand content with him, and to abyd at his and þe Arbitratouris delyuerance, or maiſt pairt of þame delyuerand; vpon þe contra-

[1] Without, &c. [2] Already. [3] Compromised; referred to the arbitrament of. [4] Umpire and Oversman. [5] Mutually. [6] Certain property held by him and his ancestors as *kyndlie tenants*. [7] Award; Decreet Arbitral. [8] Lawful. [9] To each other; each party to the other. [10] Each other. [11] For taking each other's farm-steading or possession. [12] Elect; choose. [13] Make suit; petition.

verſé þat ſalhappin to be debatabill for þe tyme, but[1] ony declaratioune to be maid in þe contrar. And for obſeruing, keping, and fulfilling of all and ſindré þe premiſſes, aþer of þe faidis pairteis bindis and obliſſis þame faithfullie to vþeris,[2] in þe maiſt ſtrait forme and ſicker ſtile of obligatioune can be dewiſit, but[3] fraud or gyle, na remeid nor exceptioune of law quhatſumeuir to be proponit or allegeit in þe contrar; renunceand þe ſamin, for þame, þair airis, executouris, and aſſignais, for now and evir, be þir preſentis. And for þe mair ſecurité, þai ar content þat þis preſent Contract be inſert and regiſtrat in þe Bukis of Counſale, and decernit to haue þe ſtrenth of ane Act and Decreit of þe Lordis þairof; and þat Letteris and executoriallis to be direct þairvpone, for compelling of aþer of þe ſaidis pairteis to fulfill þe ſamyn, for þair pairteis, to vþeris, in forme as efferis: And for acting and regiſtrating heirof, þe ſaidis parteis makis and conſtitutis, be þir preſentis,[4] [*Maiſter Dauid Borthuik*] thair vndowtit and irrevocabill procuratouris, gevand and committand to þame, coniunctlé and ſeuerálé, þair full power, expres bidding, and chairge, to compeir befoir þe Lordis of our ſouerane Ladeis Counſale, quhatſumevir dayis and place lauchfull; and þair deſyir þis preſent Contract to be regiſtratt in þe ſaidis Bukis of Counſale, and þe ſaidis Lordis to interpone þair auctorité þairto; promittand[5] to abyd ferme and ſtabill, &c. In Witnes of þe quhilk thing, bayth þe ſaidis pairteis and Curatouris abouewrittin, for þair intereis, hes ſubſcriuit þis preſent Contract with þair handis; and als Dame Jonet Betoune,[6] þe relict of þe ſaid vmq^le *Sir Walter*, hes, in ſigne of hir conſent to þe premiſſes, ſubſcriuit þe ſamin with hir hand, day, ȝeir, and place foirſaides, befoir þir Witneſſis, *Sir James Dowglas of Drumlanrig, knycht, Johne Stewart of Trocquair, Patrik Murray of Fallowhill*, ... *Murray of Cokpule*, and *Thomas Sinclair*, Writter to þe Previe Seall, with vþeris diuerſe.

[*Sic ſubſcribitur*] Walter Ker of Cesfurd. Walter Scot of Bukclewch. Janet Betoune, Lady of Bukclewch. James.[7] Thomas Scot of Hanyng. M. Johne Spens, Curatour aboue writtin. Johne Maxvell. J. Bellendene, as Curatour. Robert Scot of Thirlstane,[8] with my hand at þe pen, led be *Dauid Lauté*, Notare Publict.[9]

III. Band *ſubſcreuit at* Kelso, *be* the Baronis, &c. *of the Scherefdomes of* Berwik, &c. 6th April, 1569.

(The Editor believes that little apology will be deemed requisite for once more encroaching on the limits of this work, in his desire to preserve, in this place, the following remarkable document, the original of which is deposited in the General Register House, Edinburgh. The reader will readily perceive, that it is chiefly from an extensive perusal of such original and authentic Papers, that he can expect to arrive at a minute knowledge of the internal state of Scotland during the darkest periods of our History.)

Be it Kend till all men be þir preſent letteres, We the Baronis, landit men, Gentilmen, Inhabitantis of the Scherefdomes of Berwik, Roxburgh, Selkirk, Peblis, and Proveſtis and Baillies of Burrowis and Townis within þe ſaids boundis, in name of þe Inhabitantis of þe ſamyn, vnder-ſubſcriuand, to be bundin and obleiſt, and be þe tennour heirof, bindis and obleiſſis ws to þe Kingis Maieſtie, oure ſouerane lord, and his deareſt couſing James Erll of Murray, Lord Abernethie, Regent to his hienes his realme and lieges, as followis: That is to say, fforſamekill as my ſaid

[1] Without. [2] Each other. [3] Without. [4] In all deeds where a clause for Registration is inserted, a blank is left to insert the name of the Procurators. In the present instance, all the parties appeared personally, with the exception of the Duke, who had granted a procuration to the person whose name is filled up, according to custom, in the Register. [5] Promising. [6] This able Lady has been rendered immortal by *Sir Walter Scott*, in his Lay of the Last Minstrel. She was daughter of *John Beatoun of Creich*, and possessed the hereditary abilities of her family to such a degree, that the superstition of the vulgar attributed them to magic. After her husband's murder, she rode at the head of her Clan. [7] James Duke of Chastelherault, who uniformly adopted this princely mode of subscribing his name. [8] Ancestor of Lord Napier; a better swordsman than an expert clerk. [9] It was by no means unusual, at that period, that persons of considerable rank were but indifferently skilled in scholarcraft. All business of importance was of old transacted by churchmen or notaries; the office of which last was frequently performed by priests, who thereby added considerable emoluments to the revenues of their monastery.

lord Regentis grace hes at all tymes, and ſpecialie ſen his acceptatioun of þe regiment of þis realme, takin greit and paynefull travellis in þe quieting of þe bordouris þairof, and namelie of þe rebellious people Inhabitantis of þe cuntrie of Liddisdaill, and vtheiris Thevis, And we having regard to the innumerabill ſlauchteris, fyre-raſingis, heirſchippis, and deteſtabill enormities, dalie committit be þame vpoun þe peceabill and trew ſubiectis of þis realme, in tymes bipaſt, quhairin þai ar nocht abill to execute þair crueltie, gif we, in þe feir and obedience of God and our ſouerane lord, anfauldie[1] concur togidder to reſiſt þame, Thairfoir we, and euerie ane of ws, underſcrivand, be thir preſent letteres, avowis and declairis our ſelffis obedient ſubiectis to the Kingis Maiestie, oure onelie ſouerane lord and his authoritie, and profeſſit inymeis to all Thevis, Inhabitantis of the Cuntrie of Liddisdaill, Eskdaill, Ewisdaill, and Annanderdaill; and in ſpeciall, to all perſonis of þe ſuirnames of Armestrang, Ellot, Niksoun, Croser, Littill, Batesoun, Thomsoun, Irwing, Bell, Johnnestoun, Glendonyng, Routlaige, Hendersoun, and Scottis of Ewisdaill, and wþeris notorious Thevis, quhair euir þai dwell, and to þair wyffis, bairnis, tennentis, and ſeruandis; Obliſſand ws, þat we nor nane of ws at ony tyme heireſtir, ſall reſſet, ſupplé, or intercommoun with ony of þe ſaidis Thevis, þair wyffis, bairnis, or ſeruandis, or gif þame meit, drink, hous, or herbry; or ſuffer ony meit, drink, or victuallis to be bocht, had, or cairit to þame, furth or throw our landis, baillieries, townis and boundis, quhair we may lett:[2] Nor ȝit ſall we tryiſt or haue intelligence with þame, in previe or apairt, without knawlege and leif of the Wardane obtenit to þat effect: Or ſuffer þame to reſort to Marcattis or tryiſtis, throw oure boundis: Nor ȝit permit þame, þair wyffis, bairnis, tenentis, or ſeruandis, to dwell, remane, or abyde, or to paſture þair gudis[3] vpoun ony landis outwith Liddisdaill, except ſic[4] as within viij dayis eftir þe dait heirof, ſall find ſufficient and reſponſall ſouerteis[5] to the Wardenis of the Marches and their clerkis, that þai ſall reforme all enormities committit be þame in tyme bipaſt, and keip gude rewle in tyme cumming, and be obedient to þe Lawis, quhen þai ſalbe callit vpoun: And all vtheris not findand þe ſaid ſouertie, within þe ſaid ſpace, we ſall perſew to þe deid with ffyre, ſwerd, and all vther kynd of hoſtilitie, and expone[6] þame, and all þing in þair poſſeſſioun, in pray to þe men of weir, as oppin and knawin inymeis to God, the King oure ſouerane, and this Commoun-weill, without ſauour, aſſurance, or freindſchip, Renunceand all kyndnes, Bandis, promeiſſis, aſſurances, and conditionis, þat we or ony of ws hes enterit in with þame, in ony tyme bigane, befoir þe dait heirof, as we will anſuer to God, and vpoun our dewitie and allegeance to our ſouerane lord his authoritie, and Regent foirſaid. And in caiſe we failȝie in ony pairt of þe premiſſis, or revelis not þe contravenaris of þis Band, gif we knaw þame, we ar content to be pvneiſt þairfoir, according to the Generall Band, and panis contenit þairin. As alsua, in caiſe in þe reſiſtence or perſute of ony of þe ſaid Thevis, it ſalhappin ony of þame to be ſlane and brint, or ony of ws and our freindis to be harmit be þame, we ſall enir eſteme þe qwerrell and deidlie Feid equall to ws all, and ſall neuir aggré with þe ſame Thevis, bot togidder, with ane conſent and avyſe: And in þe menetyme ſall tak afauld, trew, and plane pairt, ilk ane with vther, and ſpecialie, ſall aſſiſt the Lard of Bukclewch, and vtheris Lardis maiſt eweſt[7] to þe ſaidis Thevis, at all occaſionis convenient. This our preſent Band quhill þe firſt day of Auguſt nixtocum in full effect and force inviolablie to endure, to þe effect a perpetuale

[1] Sincerely; heartily; literally, *one-foldly*, without duplicity. Even to this day, *twa-fald, twa-faced*, &c. are employed to denote *double* or deceitful persons. [2] Hinder. [3] Flocks of sheep, or cattle. [4] Such persons. [5] Cautioners. [6] Expose; give them up. [7] Nearest in point of local situation. It must be confessed, that this very remarkable Document gives rather an unfavourable view of the state of the *Borders* at the commencement of the reign of King James VI.; but reference to other 'Bands' and State Papers, which are faithfully conveyed to the public in the works of *Sir Walter Scott, Redpath's* Border History, and similar sources of information, prove the picture to be correct and unexaggerated. The influence of the King and his Lieutenants was but small, when opposed by the more powerful Barons; who could, in an incredibly short space of time, by means of their signal-fires, &c. alarm the country, and gather a prodigious force, with which they could easily overwhelm the royal troops. The usual policy of the Crown, therefore, was to appoint, as Waardens of the Marches, the most stirring spirits of the time; who, vain of their 'brief authority,' were cajoled into the measures of the King and Council, and thus preserved 'guid rewle' on the Border. The private Feuds of the several Clans were also turned by the Government to good account; and by means of such 'Bands' as the present, the more unruly tribes were kept in check.

and perfyte ordour anent þe repreſſing of þe ſaidis Thevis may be takin in þe menetyme. In Witnes quhairof, we baif ſubſcryuit þe ſamyn with our handis, as followis, At Kelso, þe ſext day of Aprile, the ȝeir of God I^m.V^c. three ſcoir nyne ȝeris.

Sr Nicholas Rutherfurd of Hundoley, knyt.
Jhone Rutherfurd of Hunthill.
Jhone Mow of yt Ilk.
Richard Rutherfurd, Provest of Jedburt.
James Scott, Baillie of Selkirk.
James Gledstanes of Coklaw.
Watt Scott in Beilhauch.
Watt Scott of Tuschelaw.
Hector Turnbull, Tutor of Mynto.
Cuthbert Cranstoun of Thirlstanemanis.
Robert Scott, Baillie of Hawyke.
Andro Ker.
Gilbert Ker of Prinsydlouch.
Johne Edmestoune of yat Ilk, knyt.
Williame Dowglas of Cavers.
Jhone Haldane.
Thomas Trumbuel of Bederowll.
Richart Rutherfurd of Edzerstode.
Allexander Cokburn.
Robert Scot off Edilstane.
Thomas Makdowell.
Alexr L. Home.[1]
Walter Ker of Cesfurd.
Bukclewth, knyt.
Thomas Ker of Fernhirst.
Williame Ker.
Patrik Murray of Faulahill.
Walter Ker of Dolphiustone.
Andw. . . . . .
Andro Ker of ffa . . .
T. Cranstoune of yt Ilk.
Thomas Ker of Nether Howdane.

Sheep-Stealing—Common Theft and Reset of Theft.

Jun. 21.—Jok Scott, alias callit *Jok the Sukler*, ſone to Thome Scott in Nether Braidlie.

Dilaitit of airt and pairt of the thiftious Steilling and away-taking fra Adame Almouſe, ane of the Laird of Chiſholmes tennentis, furth of that pairt of the landis of Chiſholme callit Mouſlie, occupyit be the ſaid Adame, ffoure ſcheip pertening to him; committit in the moneth of October, 1612. Item, off tua ſcheip, viz. ane ȝow[2] and ane hog,[3] pertening to George Scott, callit of Deringſtoun, furth of his landis of Caſtell-hill; in the moneth of Februar, 1613. Item, off ane blak ȝow, pertening to Rowie Scott, callit *Rowie of Huttikill*, furth of the Lyn beſyde Eilrig; at Mertimes, 1614. Item, off ſevin ȝow ſcheip, pertening to James Rowie in Raeburne, ffurth of the landis of Raeburne, in Eſkdaillmure; in the moneth of October, 1613 yeiris. Item, ffor cowmone Thift, and cowmone Reſſet of Thift.

Persewaris, Rowie Batie, callit James Rowie; Rowie Scott, in Vtterſyde; Walter Scott, his ſone; informeris to his Maieſteis Aduocat: Sir Williame Oliphant of Newtoun, knyt.

Prelocutour in defence, Mr Vmphra Blindſchellis, Aduocat.

The pannell denyis the haill poyntis of Thift contenit in his Dittay.

Assisa.

Frances Airmeſtrang, callit of Kynmonthe,[4]
Williame Airmeſtrang, his ſone, in Gryſtaill,
Alexander Armeſtrang in Wallis,
Johnne Ellote of Fallin-aſche,
Thomas Airmeſtrang in Gingillis,
Andro Airmeſtrang of the Kirktoun,
Williame Airmeſtrang in Nether Wrae,
George Langlandis of that Ilk,
Lancie Airmeſtrang in Quhithauch,
Walter Gledſtanes of Quhytelaw,
Robert Wauch of Hoip,
Robert Scott in Schelliſwoid,
Robert Airmeſtrang, callit *Rattas*,
Williame Airmeſtrang, callit *Bald*,[5]
Hectour Trumbill of Clarielaw.

Verdict. The Aſſyſe, having reſſonit and voittit vpone the pointis of the

[1] The two principal columns contain autograph subscriptions, the third is all written in the same hand. [2] Ewe. [3] A year-old sheep. [4] A descendant of *Kinmont Will*, famous in History and Border Ballad. [5] *Bauld*, bold; intrepid. Bald-headed was uniformly written and pronounced *beld*.

Dittay, and being ryplie and at lenth advyſet thairwith, togidder with dyuerſe Depoſitiones producet be our ſouerane lordis Aduocat, for verificatioun of the ſaid *Jok Scott* his giltines of the ſaidis crymes; as alſo, vpone conſideratioun had be thame to the ſweiring of thais tua pointis of Dittay, ſuorne in their preſens be the ſaidis thre perſewaris; thay all, in ane voce, be the mouth of the ſaid George Langlandis of that Ilk, chanceller, ffand, pronuncet, and declairit the ſaid *Jok Scott*, callit *the Suckler*, to be ffylet, culpable, and convict of airt and pairt of the haill poyntis of Thift aboue ſpecifeit; and of cowmone Theft, and Reſſet of Thift.—Sentence. To be tane to the Mercat-croce of Edinburgh, and vpone ane gibbet thair ſet vp, to be Hangit quhill he be deid: And all his guidis to be eſcheit, &c.

Egyptians or Gipsies contemptuously repairing and abiding within the Realm.

[The following is one of the instances of the persecution of the once formidable race of Gipsies, whose numbers were so considerable, as to excite the legislature to make various enactments for their banishment and extirpation. Notice of this pursuit has been preserved in *the Denmylne MS.S.* Adv. Library, among various Minutes of the Proceedings of the Privy Council of Scotland, in the following brief memorandum. August 28, 1616. "Anent that mater of Egiptianis, now lyand in *the Tolbuith of Edinburgh*, thay war only convict for contraveining the Act of Parliament, in not depairting furth of the Kingdome; and no vther cryme was layed to thair charge, and no cryme is knawin whairvpone thay may be challengit. *The Counſell*, according to his Maties direction, hes gewin Warrand for ſtaying the pronouncing of Dome, till his Maties farder pleaſour be knawin."

The Editor has found no other trace of the fate of these unhappy creatures; but it is hoped that the King contented himself with ordering their banishment from the country, under the usual certification.]

Jul. 19.—Johnne Faa, Egiptiane[1]; James Faa, his ſone; Moyſes Bailzie, Egiptiane; and Helene Broun, ſpous to Williame Bailzie, Egiptiane.

Dilaitit of contravening of the Act of Parliament, maid in anno 1609 yeiris, in thair contemptuous repairing to this cuntrie, being repute and haldin to be Egiptianis, and abiding thairintill, nochtwithſtanding thairof, &c. viz.

Dittay *againſt Johnne Faa, &c.*

Forsamekill as, be Act of Parliament, haldin at Edinburgh, vpone the xxiiij day of Junij, I^m.Vj^c. and nyne zeiris, it is expreſlie provydit, ſtatute, and ordanit, that all Vagabundis, Soirneris, and cowmone Thevis, cowmonlie callit Egiptianis, ſould depairt furth of þe kingdome, and remane perpetuallie furth þairof; and nevir to haif returnet agane within the ſamyn, nor be fund þairintill, eftir þe firſt day of Auguſt þaireftir, in the foirſaid zeir of God I^m.Vj^c. and nyne zeiris, vnder the pane of deid; and that it ſould be lieſum to all his Maieſteis

[1] See Jul. 31, 1611.

guid ſubiectis, or ony ane of thame, to caus tak, apprehend, impriſſone, and execute to death, all maner of Egiptianis, alſweill men as wemen, as cowmoun, notorious, and condampned Thevis; only, to be tryit be ane Aſſyſe that thai ar callit, knawin, repute, and haldin Egiptianis: As the ſaid Act of Parliament at lenth proportis. NOCHTTHELES, it is of verritie, that the foirſaidis perſones, being Egiptianis, ſua callit, knawin, repute, and haldin, in contempt of þe ſaid Law and Act of Parliament, as Vagabundis, hes lurkit and remanit within this kingdome, ſen þe making and publicatioun of the ſaid Act, and nawayis hes paſt away furth þairof: At þe leiſt, aganis þe tennour of þe ſaid Act, hes, ſen þe ſaid firſt day of Auguſt, 1609 ȝeiris, repairit within this cuntrie, and ar tane and apprehendit as Vagabundis, and maiſterles lymmeris[1] and thevis, reput and haldin, knawin and callit to be Egiptianis; quhairin thay and ilk ane of thame hes contravenit þe tennour of þe ſaid Act of Parliament, and incurrit þe panes and pwneſchment mentionet þairintill; quhilk aucht and ſould be inflictit vpone thame, with all rigour, to þe example of vþeris of þair race and vnhappie Companie to eſchew þe lyk heireſtir.

PERSEWER, Sir Williame Oliphant, knyt. PRELOCUTOR in defence, Mr Thomas Wilſoun, Aduocat.

IT is allegit be the pannell and thair prelocutour, that the Dittay is nawayis relevant to pas to ane Aſſyſe, in reſpect it is nocht ſubſumet thairintill, that the perſones dilaitit was within the cuntrie, the tyme of the making and the publicatioun of the ſaid Act of Parliament, quhilk is the grund of this perſute; nather yit is the pannell tane and apprehendit for ony Thift, Soirning, or Oppreſſioun, nor accuſet thairfoir: Off all quhilkis crymes, thay ar willing to byde ane tryell: And thairfoir, the Dittay, as it is ſet doun aganis the pannell, can nocht pas to ane Aſſyſe.—It is anſuerit be my lord Aduocat, that the allegeance aucht to be repellit, in reſpect of the Dittay and Act of Parliament.

THE Juſtice Repellis the allegeance; and Ordanis the pannell to pas to ane Aſſyſe.

VERDICT. The Aſſyſe, be the mouth of Thomas Creichtoun, mercheand in Edinburgh, chanceller, ffand, pronuncet, and declairit the ſaidis *Johnne Faa*, *James Faa*, his ſone, *Moyſes Bailzie* and *Helene Broun*, all Vagabundis, and repute and haldin to be Egiptianis, to be ffylet, culpable, and convict of contravening the tennour of the ſaid Act of Parliament.

THE Juſtice Continewit the prounceatioun of Dome vpone the perſones foirſaidis, quhill he be advyſet with the Lordis of Secreit Counſall: And ordanit thame to be returnit to waird, to the Tolbuth of Edinburgh, in the meyne tyme.

Jul. 24.—SENTENCE. The Juſtice, in reſpect na cautioun could be ffand

[1] In our old Laws, this term was always applied to denote a worthless scoundrel, a professed thief, or *reiver*. At present it is applied solely to females of loose character.

be thame, for thair departour furth of his Maiefteis dominionis, and that thai fould never returne agane within the famyn during thair lyftymes, ilk ane of thame vnder the pane of ane thowfeand merkis money; accoirding to ane Ordinance of the Lordis of Secreit Counfall, direct for that effect, vnder my Lord Chancelleris fubfcriptioun, daitit the xxiiij day of Julij inftant; be the mouth of Johnne Dow, dempfter of Court, Ordanit the faidis Johnne Faa, James Faa, his fone, Moyfes Bailzie, and Helene Broun, Egiptianis, and fa reput and haldin, tane and apprehendit, to be tane to the Burrow-Mure of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveabill guidis to be efcheit, &c.

Quhilk was pronuncet for Dome; and that, conforme to the Ordinance of the Lordis of Secreit Counfell, of the dait above expremit.

Slaughter.

Jul. 31.—Alexander Dumbar of Kilboyak, and others.[1]

Dilaitit for the Slauchter of vmq^le Alexander Dumbar of Waftfield.

Persewaris, James and Thomas Dumbaris, as brether.

The Juftice, for cauffis moveing him, fpeciallie, that the pairties war vnder the termes of aggrement, Ordanit the dyet to Defert.

Usurping his Majesties Authority—Convocation of the Lieges—Murder under Colour of Law, &c.

[The particulars of this very remarkable and keenly contested Case[2] are so fully narrated in the proceedings which follow, and in the various Histories of the *Family of Gordon and Sutherland*, that it is unnecessary for the Editor to add any thing farther. It only seems proper to give, in this place, the following notice from the MS. Collections of *Sir James Balfour*, preserved in the Library of the Faculty of Advocates; which, though only relating to the preliminary arrangements, forcibly shows the spirit with which such matters were conducted, even before the Supreme Criminal Tribunal of the kingdom, where the parties were connected with noble and powerful families.—August 28, 1616. 'This day being appointit to the Laird of Geicht, *Johnne Gordon, Sheref-depute of Aberdein*, and the reft of thair complices, for thair compeirance before the Juftice and his deputis, in the Tolbuith of Edinburgh, to vnderly the lawis for the flaughter of vmq^le *Frances Hay;* the Sheref-depute, accompanyed with fum Gentilmen of the name of *Gordon*, and vtheris, came to this burgh, with outwarde fhow, and apperance to have prefented himfelff to his tryell; and by his Petition, gewin in this day to *the Counfell*, he craved Licence to fum Gentilmen of his name to accompany and affift him at the Bar: Which was grantit to fex perfones felected and maid choife of be himfelff. *The Erle of Erroll* came lykwayes heir, for perfute of that mater, he haveing procurit ane Licence from *the Counfell*, convenit at *Aberdene*, for his cuming heir; with conditioun that he fould keip his lodging, and not come furth thairof, without *the Counfellis* Warrand. He, be Petition gewin in this day to *the Counfell*, cravit Licence that he might go to the bar, to affift the perfute of that mater; bot, in regaird he was excommunicat, it was not thought expedient that he fould go in perfone to the bar, becaus it was fufpectit

[1] See Jul. 24, 1611. On Jan. 15, 1617, "Sir Williame Hairt, his Maiefteis Juftice, Ordanis the dyet to defert." Whereupon George Duff, writer, protests for relief of the cautioners, &c. [2] See also two entries immediately following this; and especially, that of *George Gordon of Geicht*, Feb. 26, to June 27, 1617.

that the excommunication would be obiectit aganiſt him, to debar him from proces: And als, becaus HIS MATIES *Advocat* was pairtlie perſewar in the Letteris, who wald proſecute that mater, als weill as if *the Erle* war preſent. The Court being fenſit, *the Juſtice, Juſtice Clerk*, with the haill memberis of the Court, and the pairteis perſewaris being all preſent, and *the Sheref-depute* being conſtantlie looked for to compeir, he notwithſtanding abſentit him ſelff; and is thairfoir declairit fugitiue, and his cautioneris vnlawit.']

Aug. 28.—JOHNNE GORDOUN of Clubiſgoule, Scherref-depute of Aberdene.[1]

Dilatit ffor airt and pairt of the Vſurpatioun of our Souerane lordis royall power and authoritie, in the arrogant and preſumptuous cuming, with convocatioun of ane grit number of his Maieſteis legis, vpone the xviij day of December I^m.V^c. and fyftene yeiris, to the duelling hous of *Williame Hay of Logyruif*; and without ony lauchfvll Warrand, authoritie, or Commiſſioun, puting violent handis in the perſone of vmq^le *Frances Hay, ſone to vmq^le George Hay of Ardlethame*, bringing him perforce and aganis his will furth of the ſaid hous, cayreing him with ane grit number of men in airmes to the burgh of Aberdene, as ane captiue and priſſoner; committing him in priſſone, within the ludgeing of *George Gordoun of Geicht*, ane of his principall takeris, callit "*the Bony Wyfes Inne*," in the Gallowgait of Aberdene, keiping and detening him in maiſt ſtrait firmance thairintill, be the ſpace of fourtie aucht houris; nocht ſuffering any man of his kyn or freindis to haif acceſs to him, during all that tyme: Committit be the ſaid *George Gordoun of Geicht, Williame Hay*, his ſone in law, *Johnne* and *Alexander Gordones*, his brether, James Baird his ſeruand, and vtheris thair complices. Off the ſpeciall cauſeing, ſending, hounding out, airt, plane pairttaking, counſelling, devyſeing, command, aſſiſtance and ratihabitioun of the ſaid Johnne Gordoun Scherref depute of Aberdene, and quha, during the tyme of the ſaid Frances impriſſonement within the ſaid Inne, reſoirtit dyuerſe tymes thairto with the ſaid Laird of Geicht, to countinance and aſſiſt the vnlauchfull keiping and detentioun of the ſaid vmq^le Frances thairintill: AND ſicklyk, the ſaid Johnne Gordoun of Clubbiſgoule, pretendit Schereff depute of Abirdene, being giltie in his own conſcience, befoir God, of parcialitie and preoccupyit opinioun, and knawing weill aneuch that the tyme of his priuilege, gif he ony had, was expyrit; notwithſtanding thairof, to the heich offence of Almichtie God, contempt of our Souerane lordis princlie power, and to the grit ſcandall of the Juſtice of this kingdome, ffor his preſumptious and arrogant vſurpatioun and aſſumeing to him ſelff, with ane evill conſcience, of the place and office of the Criminall Judge, in preſenting him ſelff in Judgement, and ſetting doun thairintill as Judge, ffenceing of Court, and calling and accuſeing befoir him of the ſaid vmq^le *Frances Hay*, for the allegit Slauchter of vmq^le *Adame Gordoun*, brother germane to the ſaid

[1] See Feb. 26, 1617, &c.

Laird of Geicht; and for nocht admitting and ſuffering prelocutouris to compeir and defend the ſaid vmq^le Frances, the tyme of the ſaid perſute; bot be the contrair, debarring *Mr Williame Barclay, Aduocat,* quha was reddie to compeir in his defence, and quha had mony guid and ſufficient exceptiones to haif proponit, to haif ſtayit[1] his puting to the knawlege of ane Aſſyſe, for the ſaid allegit cryme; be ſending of *George Leſlie of Kincragie,* with ane commiſſioun to the ſaid Mr Williame, diſchargeing him, vpone the perrell of his lyfe, to compeir in the ſaid Frances defence; and aſſureing him, gif he ſa did, fra he war anes doun the ſtair,[2] thair ſould be tuentie quhingeris put intil him: And ſua, for debarring of the ſaid vmq^le Frances, and defrauding him of the benifeit of lauchfull defence, quhilk God and nature hes indifferentlie allowit vnto all men: And for the maiſt partiall proceiding aganis the ſaid vmq^le Frances, nochtwithſtanding of the premiſſes, in putting him to the knawledge of ane Aſſyſe of ane number of perſones ſelectit and maid choſe of be the ſaid *Laird of Geicht,* perſewar, and his freindis, and altogidder adictit to thair mynd and directioun; quha, accoirding thairto, convictit him of the ſaid allegit Slauchter: And for the partiall and wilfull pronunceing vpone the ſaid convictioun, of the Dome and Sentence of daithe aganis the ſaid vmq^le Frances, to loiſe his heid: And for that effect, maiſt partiallie and vndeutifullie, aganis the office of ane Judge, delyuering of the ſaid Frances bak agane to the ſaid *Laird of Geicht* and his complices, the pairtie perſewaris, quha tuik him to thair awin privat priſſone; and vpone the morne thairefter, caryeit him furth at ane bak ȝet, to ane hole betuix tua mottis,[3] quhair thay crowned thair tragidie with ſo boutcherlie mangling and demaning[4] the puir gentill-man, be geving to him ſex ſeueral ſtraikis vpone his ſchoulderis, heid, and nek, as the lyk hes nevir or ſeldome bene hard or ſene: And ſa, vnder the pretext and cullour of law, and ſcandall of Juſtice, ffor the crewall and barbarus maſſacaring and ſlauchter of the ſaid vmq^le Frances, be the ſaid Johnne Gordoun, ſcheref-depute, his pretendit vſurpeing Judge; quha thairthrow in a heich degrie hes contempnit and abuſet his Maieſteis royall name and authoritie, in making it a cloke and cover to the revenge of the perticuler querrell of him ſelff and his freindis. In maner ſpecifeit and ſett doun in the criminall Letteris direct aganis him thairupoun.

The Juſtice, be the mouth of Thomas ȝoung,[5] dempſter of Court, Ordanit Adame Gordoun of Boighoill (as cautioner and ſouertie for John Gordon's entry) to be vnlawet in the pane of ffyve hundreth merkis, for the nocht entrie: And that the ſaid Johnne Gordoun ſall be denuncet our ſouerane lordis rebell, and put to his hienes horne; and all his moveabill guidis to be eſcheit, &c.

[1] Delayed; prevented. [2] By the time he got down stairs. [3] To a hollow betwixt two moats or fosses; the ground being probably selected, or constructed, so as to prevent a rescue of the unhappy victim of their barbarity. [4] Using; treating. [5] Who appears in this office for the first time.

Murder under Colour of Law, &c.

Aug. 28.—GEORGE GORDOUN OF GEICHT,[1] Williame Hay, his ſone in law; Johnne Alexander, Robert and Patrik Gordones, brether to the ſaid Laird of Geicht; Johnne Gordoun of Clubiſgoule, Scheref depute of Aberdene; Williame Gordoun in the Maynes of Geicht, ſervand to the ſaid Laird; Johnne Sinclair, brother to the Laird of Achannachie; Andro Nicolſoun, ſervand to the ſaid Williame Hay; Patrik Cantlie in Airdifferie, and Andro Mylne, ffalconer.

Dilaitit for the uſurpatioun of our ſouerane lordis authoritie, &c.[2] at the inſtance of Mariorie Keith the relict of vmq^le^ *George Hay of Ardlethame*, as mother; George Hay, as brother to vmq^le^ Frances Hay, ſone to the ſaid vmq^le^ George Hay of Ardlethame; and of Sir Williame Oliphant of Newtoun, kny^t^, Aduocat to our ſouerane lord, for his hienes intreis. The ſaid Mariorie, &c. producet the Letteris deulie execute and indorſate; vpone the productioun quhairof, the ſaidis perſewaris aſkit inſtrumentis, and proteſtit for releif of thair cautioneris.

Murder under Colour of Law, &c.

Aug. 28.—GEORGE GORDOUN OF GEICHT, and others above mentioned, and James Baird,[3] in the Maynes of Geicht, ſervand to the Laird of Geicht.

Sir William Oliphant of Newtoun, kny^t^, producet his Maieſteis Letteris deulie execute and indorſate, raiſit at his lordſchipis inſtance, as Aduocat to his Maieſtie, for his hienes intreis allanerlie.[4]

Forcible Abduction and Marriage of a Minor, without having obtained the lawful consent of his Guardians.

Nov. 8.—SIR PATRIK CHIRNESYDE OF EIST NISBET, Alexander Cranſtoun of Burnecaſtell, Johnne Cranſtoun, brother to Williame Lord Cranſtoun, Williame Home of Hardeiſmylne, and Williame Moffet, his ſervand.

Dilaittit of violent Rape and Raveiſching,[5] taking, and detening of Adame Frenche of Thornydykis, ane ȝoung bairne ſcarce paſt xiiij ȝeiris of age, furth of the Toun of Hadingtoune; and thairfra tranſpoirting him to Rymmiltoun-law,

[1] See Feb. 26, 1617. [2] As in the previous case. [3] This person is omitted (probably by a clerical error) in the former case. [4] Alone; solely. [5] These terms, in the Ancient Criminal Law of Scotland, as has been frequently noticed in this work, signify merely the act of carrying off by violence, or against the will of the party so abused. The term employed to denote RAPE, as now understood in Scotland and England, was 'FORCEING.' 'Rapt' and 'Raveiſching' only inferred what is at present technically termed 'Forcible Abduction.' A stronger illustration of the meaning formerly attached to these phrases could hardly be adduced than the present Trial.

and thairfra, as ane captiue, to Eift Nifbet; and thairfra to Beruik, quhair, but (*without*) confent of Sir Johnne Home of North Beruik, Donatour to the Gift of his Waird and Mariage, he was mareit to Jean Chirnefyde, dochter to the faid Sir Patrik; committit in the moneth of November, 1615 ȝeiris.

Prelocutouris in defence, Mr Alexander Peiblis, Johnne Belfis, Mr Robert Fairlie, Aduocatis.
Prelocutouris in perfute, Sir George Home of Manderftoun, Sir Williame Oliphant of Newtoun.
Persewaris, Sir Williame Oliphant of Newtoun, kny^t^, for his hienes intreis; Sir Johnne Home of North Beruik, kny^t^, as Donatour to the Waird of the faid Adame French mariage, for his intreis.

The Aduocat, with Sir Johnne Home of North Beruik, kny^t^, as perfewaris, produces the fummondis. Eftir reiding thairof, the Aduocat produces, for Sir Johnne Home of North Beruik his entreis, the Gift of the faid Waird and Mariage of Adame Frenche of Thornydykis.

The Pannell, befoir farder proces, defyres my lord Juftice to heir Adame French of Thornydykis, prefentlie in Judgement, quha is the perfone allegit ravifchet and tane away, to mak his awin Declaratioun of the forme and maner thairof; and thaireftir, thay fall cum to thair Defencis in the cause.—My lord Aduocat Difaffentis to ony Declaratioun to be maid be the faid Adame Frenche, in this matter; and defyres the pannell to cum to thair awin allegeances, quhy the fact lybellit fould nocht pas to ane Affyfe.

The Juftice Ordanis the pannell to propone thair defenffis aganis the lybell and relevancie thairof.

Adame Frenche of Thornydykis, being perfonallie prefent, difaffentis fra this perfute; and thairupoun afkit inftrumentis.

It is allegit be my lord Aduocat, that the difaffenting of Adame Frenche fould nocht be refpectit, becaus he is naither perfewar nor defender in the caus; and the Aduocat, with the perfewar, haifing fufficient entreis for the King, may perfew.—It is anfuerit, that my Lord Aduocatis anfuer touching the perfute, movet be his lordfchip and Sir Johnne Home, nawayis can ftay this young Gentilman to difaffent thairfra, *fed valeat cum proceffu quantum valere poteft.*

It is allegit be the pannell and thair prelocutouris, that Sir Johnne Home hes na intreis to perfew this caus, being criminall; becaus his only intreis is as Donatour to the waird and marriage of Adame Frenche; quhilk Gift, *per fe*, can geve him na entreis to perfew criminallie, becaus, be the Gift of Waird, he hes nather entreis *in perfonam neque in rem: In perfonam*, becaus this young Gentilman, befoir the intenting of this caus, was paft fourtene yeiris compleit, and hes electit and chofin Curatouris to him, for adminiftratioun of his perfone: *In rem*, he has na entreis, becaus howbeit it may appeir be the Gift producet, that Sir Johnne Home is Donatour to the Waird of this young Gentilman, yet, *in rei veritate, res aliter fe habet*, as Sir Johnne Home will nocht deny, and as fall be maid cleir to

the Judge; in ſa far as (at) the tyme of vmq^le Robert French deceis, father to this young Gentilman, haiſing tua father-brether[1] on lyfe, viz., James and Johnne Frenches; James haiſing aue cair of the bairnes educatioun and ſtanding of the hous, delt for the Gift of the Waird and Mariage, to the vtilitie of the bairne; bot, becaus he was nocht hable to diſcharge that adminiſtratioun of the bairne as become him, in reſpect of dyuerſe trubbillis and cummoris[2] he come vnto, he makis choſe of the ſaid (*Sir*) *Johnne Home of North Beruik*, as ane truſtie freind to him and the bairne, borrowis his name to the ſaid Gift, and inſertis his name thairintill; nocht that the ſaid Sir Johnne ſould rype[3] ony commoditie thairof, bot vſeing the ſaid Sir Johnnes name, nocht being hable to diſcharge the office him ſelff. For cleiring[4] of this, it is of verritie, that nocht-withſtanding of the inſerting of the ſaid Sir Johnnes name in the Gift, the ſaid vmq^le James French intromettit with the haill leving pertening to the ſaid bairne, during his lyftyme, keipit the ſaid bairne in his cuſtodie, at leiſt was in the cuſtodie of his guidſchir on the mother ſyde,[5] within the place of Hardies-mylne, and that but[6] interruption, challenge, or queſtioun made be the ſaid Sir Johnne, anent the cuſtodie of the bairne, or vplifting of the maillis[7] and deuteis of his leveing: For forder qualificatioun of this argument, it is lykwayis of verritie, that eftir the deceis of the ſaid vmq^le James Frenche, vmq^le Johnne Frenche, younger brother to the ſaid James, being ſervet and retouret air[8] to the ſaid vmq^le James his brother, nocht only intromettit with the ſaid vmq^le James his leving, bot lykwayis with the haill rentis of the ſaid bairnes leving, *Tutorio nomine*, the ſaid vmq^le Johnne being ſeruet and retouret Tutour to him; quhairby it is cleir that this Gift of Waird of the ſaid minor can gif the ſaid Sir Johnne no intreis to perſew this cauſe, his name being only borrowit to it, as ſaid is. Lyk as, thair is actioun depending at the inſtance of the bairne and his Curatouris befoir the Lordis of Seſſioun aganis the ſaid Sir Johnne for his intro-miſſioun with the maillis and deuteis of his landis, and for transferring and tranſ-lating of the Gift of the Waird in the perſone of the minor, as tane to his awin behuif, and the ſaid Sir Johnnes name only borrowit thairto. And ſa, haiſing nather entreis *in perſonam neque in rem minoris*, his Gift can geve him na intreis to perſew this caus. *Secondlie*, albeit it war grantit, as it is nocht, that the Gift was tane to the behuif, utilitie, and proffeit of the ſaid Sir Johnne, yet the Gift of the Waird can geve the ſaid Sir Johnne na intereis to perſew this caus, being ane Criminall perſute, without the expres concurſe, affiſtance, and ratihabitioun of the ſaid minor him ſelff, aganis quhome the Rapt lybellit is allegit to be com-

[1] Paternal uncles. [2] Literally *cumbers*, encumbrances, difficulties, embarrassments; but in this instance it denotes strife, feud, &c., as the word then denoted. [3] Reap. [4] Elucidating. [5] Maternal grandfather. [6] Without. [7] Rents. [8] Served and retoured heir.

mittit; quha nocht only refuiſſis to concur and aſſiſt the ſaid Sir Johnne; bot, be the contrair, compeiris with the defenderis, and aſſiſtis thame; affirmeing all that was done be thame, to be lauchfullie done, and quhat was done to him was at his awin deſyre, and be his awin ſpeciall conſent.

It is anſuerit, be my lord Aduocat, and the ſaid Sir Johnne Home, that the ſaid Sir Johnnes entreis is ſufficientlie qualifeit and inſtructit for perſute of the actioun lybellit, ſeeing it is lybellit that he is Donatour to the Waird and marriage of Adame Frenche, aganis quhome the haill wrongis lybellit war committit, being our ſouerane lordis frie lege; and that the cuſtodie and keiping of minoris, quhais landis fallis in our ſouerane lordis handis be reſſone of Waird, properlie pertenis to the Donatour of the Waird and Mariage: Lyk as, it is expreſſlie qualifeit in the ſaid Summondis, that the ſaid minor was in the ſaid Sir Johnnes poſſeſſioun mony yeiris befoir the tyme lybellit, furth of quhais poſſeſſioun it was nocht lauchfull to the defenderis nor nane of thame to mell[1] with him, in maner lybellit, nor tak him furth of his poſſeſſioun: Lyk as, complent being made of befoir be the ſaid Sir Johnne, befoir the Lordis of Secreit Counſell, aganis the ſpeciall perſones his away-takeris, viz. Williame Home and Williame Moffet, the ſaid Sir Johnne was ffund to be ane pairtie compliner to call for exhibitioun of the ſaid bairne; in quhais favour ane ſentence was gevin and pronuncet, ffinding and declairing that the ſaidis Williame Home and Williame Moffet had committit ane verrie grit offence and ane moſt pernicious and wiket preparatiue and example, in trayning and taking away the ſaid Adame Frenche out of the ſaid Toun of Hadingtoun, quhair he was placet at the ſcole be the ſaid Sir Johnne; in reſpect quhairof, the ſaid Sir Johnne hes indoutit rycht and intreis to perſew the actioun lybellit; and ſpeciallie, to informe and concur with our ſouerane lordis Aduocat, quha hes ſpeciall entreis be him ſelff, in his hienes name, to perſew the crymes lybellit. As ffor the impertinent[2] diſcourſe, that the richt of the Waird was tane to the behove of the bairne be the advyſe of vmq^le James and Johnne Frenches his father-brether, that alledgeance is nather releveant nor inſtructit; and ſa, na reſpect aucht to be had thairto: And yit, to anſuer to the firſt pairt, anent James intromiſſioun, the allegeance is altogidder irrelevant; for albeit he had intromettit, that eſtabliſches na richt of the Waird in his perſone, bot the Donatour had ſufficient intreis to perſew the intromitteris with the maillis and douteis of the Waird landis: And, to mak the matter mair manifeſt, James deceiſt within fyftene dayis efter Robert his brother: Lyk as, vmq^le Johnne was ane actuall ſeruand to the ſaid Sir Johnne, during his lyftyme, eftir the dait of the ſaid Gift. And as to the laſt pairt of the ſecund allegeance, beiring that the ſaid Adame French diſaſſentis fra the perſute, and concurris with the defenderis,

[1] O. Fr. *mesler*, to intermeddle; to interfere. [2] Irrelevant; not pertinent.

affirmyng that all [that] was done to be done of his awin conſent, it is anſuerit, as of beſoir, that his diſaſſenting fra the perſute can nocht preiudge ony of the perſewaris: And as to the laſt pairt of the ſaid allegeance, quhilk appeiris to be proponit aganis the intreis, it is rather affirmatioun that the ſaid Sir Johnne hes intreis nor[1] oppoſitioun aganis the ſamyn; and gif it ſall pleis the pannell to propone it, as ane defenſe in the cauſe, thay ſall haif ane direct anſuer; ffor, be the proponing of that allegeance, it is grantit that the Donatour hes intreis; and that he is Donatour, it is verifeit be the Gift producet: Bot to mak this matter cleir, it is anſuerit directlie, that ane cryme being committit aganis pairteis quha hes intreis, the Confeſſioun of the pairtie offendit can nevir tak away thair intreis, nather yit the Kingis intreis efter committing of the cryme, ffor, albeit wrang had bene done to ane maior,[2] and the maior wald renunce the actioun, that can nawayis preiudge the Kingis Maieſteis intreis, nor na vther pairtie quha is preiudget; as is cleir in the haill article of the Cod. L. vnica Codice *de Raptu Virginum*, et Lege *Raptores*, C. *de Epiſcopis et Clericis:* And to mak this matter the mair cleir, it is ſpeciallie declairit be the Act of Parliament maid in October 1612, that the declarationn of the perſone raviſchet ſall nawayis preiudge the Kingis Maieſtie of his intreis to perſew the committer of the cryme: And to cleir this matter forder, the ſaid Adame Frenche, eftir his away-taking, be ane Letter, all writtin and ſubſcryuit with his awin hand, grantit and confeſſit that he was tane away aganis his will and vndone; as the Letter heirwith producet beiris.

To the quhilkis it is anſuerit be the pannell, that the allegeances proponit be thame aganis the ſaid Sir Johnne Homes intreis ſtandis relevant, nochtwithſtanding of my Lord Aduocattis anſuer; becaus the defendaris affirmes conſtantlie, that of the Law nor Practique of Scotland, the Donatour of the Waird or Mairiage of ony perſone hes na actioun criminall competent to him for ony wrang done to the minor, without the concurſe of the minor quha is offendit, bot that the Gift of the Waird inferis to the Donatour only ciuile actioun, *per ſe:* And howbeit the keiping of the minor during the Waird pertenis to the Donatour, yit gif the minor be paſt xiiij yeiris, *et ſic ſui juris*, divertis him ſelf willinglie out of the companie of the Donatour, paſſis forwardis to the electioun of his curatouris, thair is na actioun competent of the law to the Donatour, for exhibitioun and delyvering to him of the minor. Lyk as, Williame Home being ſummoned beſoir the Counſell, for exhibitioun of the ſaid Adame Frenche, and being be Ordinance of the ſaidis Lordis, thaireftir, ſequeſtrat in the handis and cuſtodie of *James Archbiſchope of Glaſgow*, vpone ane Supplicatioun gevin in be the ſaid Adame him ſelf to the ſaidis Lordis, the ſaidis Lordis, be thair Decreit, Ordanit the ſaid Adame to be put to libertie to pas and repas at his pleſour, nocht-

[1] Rather than the contrary argument. [2] A person arrived at lawful age, or majority.

withſtanding of the Gift of the Waird diſponit to the ſaid Sir Johnne Home, quhais entreis could be na impediment to ſtay the ſaid Adames libertie: Lyk as, conforme to the ſaid Decreit, being put to libertie, he frelie, volunterlie, and willinglie repairit to the Place of Eiſt Niſbet, quhairin he hes remanit ſenſyne, as to ane ſpeciall freind; and, gif neid beis, the ſaid Adame, be his awin Declaratioun, will declair his intentioun of paſſing to Eiſt Niſbet. And for inſtructing thairof, produces the bairnes grevis,[1] to be conſiderit be my lord Juſtice, deſyreing the ſamyn to be red as ane ſpeciall pairt of the proces. As to the Letter producet be my lord Aduocat, the ſaid Adame denyis the ſame altogidder to be his hand writt, and thairfoir na reſpect ſould be had thairto: Lyk as, the ſaid Adame being perſonallie preſent, Judiciallie declairis he can nocht wryte; and this Letter producet be my Lord Aduocat was writtin by[2] his knawlege in *the Guidman of Manderſtones* hous, the tyme of his ſequeſtratioun; and in cace it war his hand writt, it could mak na faith in judgement, being direct be ane minor. As to the Act of Parliament producet, quhilk is in anno 1612, the alledgeance foundit thairupoun militatis nawayis in this eirand, nather is this perſute foundit vpone that Act of Parliament; and quhan as my lord Aduocat foundis a perſute thairupoun, it ſall haif the awin anſuer.[3] *Igitur*, &c.

The Aduocat, for him ſelf, and for the pairtie, repeittis his former anſueris, with this additioun, that the minor being in the Donatouris poſſeſſioun of his Waird and Mariage, lyk as, he was be the ſpace of fyve yeiris befoir the Rapt lybellit, could nocht haif been tane out of his poſſeſſioun, in maner contenit in the Summondis; and the away-takeris of him aucht to be pwneiſt accoirding to the deſyre of the Summondis. As to the impertinent diſcourſe, that the Waird was tane to the behuif of the bairne, thair is nathing producet to verrifie the ſamyn; and albeit it war verifeit, it is altogidder irrelevant, in reſpect of the former anſuer; and ſpeciallie, in reſpect that the Defenderis had na intreis, in maner lybellit, to haif mellit with the minor: And quhairas thair is mentioun maid of the electioun of his Curatouris, thair was na Curatouris choſin the tyme of the committing of the crymes lybellit, quhilk was done in November 1615, the Curatouris being alledget choſin in Julij thaireftir, 1616. And quhair mentioun is maid of the bairnes libertie and ſequeſtratioun, that is nawayis pertinent to this purpois, in reſpect of the lybell. *Igitur*, &c.

It is allegit be the pannell, that the electioun of the Curatouris be Adame Frenche in July 1616, is ſufficient, nochtwithſtanding of his away-taking of befoir; and that be reſſone that howbeit the Curatouris was nocht choſin befoir

[1] Probably *grievances*. There is marked on the margin of the Record, 'Thir grevis tane vp and keipit be my lord Juſtice.' [2] Without; beside; contrary to. [3] Its own, *i. e.* a special answer to the pursuit so founded.

the allegit Rapt, yit he was maior befoir the allegit Rapt, paſt fourtene yeiris of age, &c. *Igitur*, &c.—It is anſuerit thairto be my lord Aduocat and the perſewar, that na reſpect aucht to be had, quhidder he was paſt xiiij yeiris of age the tyme of the committing of the crymes or nocht, quha being at that tyme in the cuſtodie and keiping of the Donatour to the Waird, and na curatouris choſin to him, the defenderis had na intres to haif mellit with him, as is lybellit. And quhair it is allegit, that the Miſſiue uſet and producet for the ſaid Adame, aucht nocht to be reſpectit, in reſpect of his minoritie; it is anſuerit, that the ſamyn aucht to be reſpectit, being all writtin and ſubſcryuit with his awin hand: And to convert that argument aganis the defenderis, na reſpect aucht to be had to his Declaratioun, nather be word or writ this day, in reſpect of his minoritie. As to the Teſtimoniall producet for his age, na reſpect aucht to be had thairto, for the reſſones aboue writtin, ſpeciallie, in reſpect he was baptizet the xij of November, 1601, and was tane away in November 1615, ſua that it is nocht conſtant[1] thairby, quhidder he was paſt xiiij yeiris or nocht the tyme of the Rapt lybellit. *Igitur*, &c.

It is allegit for the Defenderis, that the Dittay is nawayis relevant to infer aganis thame ony criminall perſute, nather can thay pas to the knawlege of ane Inqueiſt thairfoir; becaus the fact contenit in the Dittay, it is *vel Raptus vel Plagium: Raptus*, of the Law, it is nocht; becaus *raptus et raptura* of the Law is only concerning Virginis, and nocht more. Cap. *de Raptu Virginum, toto titulo*:—Bot quhidder it be *vel Raptura vel Plagium*, yit the Dittay is nocht relevant, becaus *ad crimen Plagii vel Raptura, oportet accedat et interveniat vis et violentia: Oportet de jure ut deportatur de loco in locum, clandeſtinè, violenter*, and that his freindis and kineſmen be debarrit fra haifing acceſs to him, quhairby he is depryvet of the libertie of ane frie ledge: Bot ſa it is, that nane of thir perticuleris, without the quhilkis the Dittay can nocht be relevant, is ſet doun in this Dittay; ffor firſt, thair is no violence nor violent fact ſet doun thairin; it is nocht lybellit that he was violentlie, quyetlie, and clandeſtanlie tranſpoirtit fra place to place; or that he was detenit, *quaſi in carcere*; or that he was debarrit fra his freindis, or fra haifing acceſs to his freindis, or thay to him; bot be the contrair, it is affirmet in the Dittay, that he frelie, volunterlie, and willinglie paſt with Williame Home, his mother-brother,[2] out of the Hous of Mr Williame Bowie, quhilk inferris a frie away-cuming, being with his mother-brother, and nerreſt of his kyn, haifing na kyn of the father ſyde knawin to him: And ſa, the Dittay is altogidder irrelevant. As to that pairt of the Dittay, beiring that the remanent defenderis are airt and pairt thairof, thay can nocht pas to ane Aſſyſe vpone that point of the Dittay; becaus, gif thair be nocht

[1] Clear; apparent. [2] Maternal uncle.

ane cryme committit be the principallis, nor a relevant cryme ſet doun againſt thame, the perſones can nocht be alledgit to be airt and pairt thairof; and albeit it war relevant for the principallis, it is nawayis relevant aganis the remanent perſones, as airt and pairt; becaus airt and pairt, of the Law, is, *qui prodet vel auxilium vel conſilium; auxilium, vel ante factum, vel in facto, vel poſt factum:* Thair is nather *auxilium* nor *conſilium* relevantlie lybellit aganis thir defenderis, *neque ante factum, in facto, vel poſt factum;* ffor thair is nathing lybellit aganis thame, bot that he was firſt tranſpoirtit to Rymmiltone-law, and thaireftir to Eiſt Niſbet; and that thaireftir he was mareit to Jeane Chirneſyde, quhilk is na qualificatioun of violence *cum matrimonia ſunt libera de jure;* and the mariage of ane minor, eftir his compleit age of xiiij yeiris, quha hes *conſenſum* of the Law, can nocht be comptit ony violent fact, becaus it proceidis of his awin propper fact; ſpeciallie, ſeing the mariage proceidit vpone the Proclamatioun of his bands, publictlie, in the paroche kirk, quhilk takis away the grund of the argument of violence vſet aganis him. *Igitur*, &c.

It is anſuerit be the perſewaris, for verifeing of thair Summondis, and haill memberis thairof, that the ſamyn is verrie relevantlie conſauet, and aggreis with the Lawis and practique of the realme of Scotland, Ciuile, and Commoun Law, and Lawis of all Nationis maiſt ciuile, Ingland and ffrance; and thir anſueris ar proponit be him to verifie all the memberis of the propoſitioun contenit in the Summondis, and to elyde[1] the exceptiones proponit be the pannell, baith for the principallis, and thais that ar callit for airt and pairt: And as to the ffirſt member of the propoſitioun, the perſewaris alledges, that the ſamyn is ſufficientlie verifeit be the haill article of the Cod. L. nono, Tit. 20. ad Legem Fabiam *de Plagiariis;* lyk as, be the Lawis and practique of this realme, the taking of ony frie perſone is capitall, and ſumtyme thocht to be treſſonable: It was fund to be capitall aganis *George Meldrum of Dumbrek*, for taking of *Mr Alexander Gibſone;* lyk as, he was perſewit and pwneiſt to the death thairfoir: *The Marquis of Huntlie*, and *the Erles of Cranfurd* and *Bothuell*, war perſewit criminallie, for the taking of vinq^le^ *Thomas Maiſter of Glammes*, and put to the knawledge of ane Inqueiſt. As concerning the Raviſcheing, that pairt is verifeit to be capitall, be the Act of Parliament maid in the dayis of King James the Fyft, of worthie memorie, in the moneth of Marche, 1540, cap. 118; and ſiclyk, be the foirnameit Act, in October, 1612; be the Ciuile Law, the ſame member anent the Raviſcheing is capitale, toto Titulo et Lege vnica *de Raptu Virginum* et Lege *Raptores*, Codice *de Epiſcopis et Clericis:* And albeit the ſaidis Lawis chieflie makis mentioun of violence committit againſt Wemen, yit the Gloſs and haill Juriſconſultis reſolues, that the ſame lawis hes place quhair ane man is raviſched:

[1] Cut off; redargue. Lat. *elidere.*

And albeit na violence war lybellit, yit thair is ſufficient circumſtances lybellit to infer the violence; beiring directlie, that quhan the ſaid *Adame Frenche* deſyret to be bak agane to Hadingtoun, the principall perſones defenderis, at the leiſt *Williame Home, Alexander Cranſtoun of Morieſtoun*, and *Williame Moffet*, of the ſpeciall cauſing, counſalling, and devyſeing of the haill perſones contenit in the Summondis, had the ſaid Adame in thair power, and tauld to him planelie that he ſould nocht returne, bot that it behovet him to go to Eiſt Niſbet, to marie the Lairdis dochter; and this was done be thame, eftir that the ſaid Adame was tane and apprehendit be the ſaid *Williame Home*, (and) was craftillie movet, perſuaidit, and intyſet to pas with thame furth of Hadingtoun, of intentioun to haif viſſeit *Margaret Haitlie*, his guidame, and ſiſteris, albeit that was nocht thair intentioun; bot that followit quhilk thay proponit to thame ſelffis frome the begynning, to keip him in thair handis quhill he war mareit with *Eiſt Niſbetis* dochter: Lyk as, he was quyetlie and ſecreitlie convoyit and cayreit fra Hadingtoun to Rymmiltone-law, in the Merſe, than the duelling-hous of the ſaid Alexander Cranſtoun of Morieſtoune, and thairfra, be the ſaid Williame Home, Alexander Cranſtoun, Johnne Cranſtoun, and Williame Moffet, to the Place of Eiſt Niſbet; and thairfra, furth of the realme of Scotland, to the Toun of Beruik in Ingland, quhair he was ſecreitlie mareit *clandeſtinè*: Quhilk anſuer is ſufficient to infer the concluſioun of the lybell, in reſpect of the circumſtances contenit in the Dittay: And yit to mak the Dittay relevant, of the Law, albeit thair war na violence lybellit, quhan pairteis are ſeducet and intyſet, the cryme remanis capitall, as is contenit in the lybell; and alleges Godfredus, ad dictam Legem *Raptores*, et Bald ibidem; Farinacius *de Delictis carnis*, queſt. 146, Tit. 16, numero 40; Cheſſa. *de conſuetudine Burgund.* Rub. 1, pag. 57; Salicotus ad dictam Legem vnicam, Cod. *de Raptu Virginum*, quhais woirdis ar thir ſchortlie, '*quod perſuaſio doloſa, in talibus, plus eſt quam violenta tractio.*' Forder, be ane expres Statute maide be Henrie the Third of France, it is ordanit, that quhoſoeuir ſall be fund to haif ſubornet or intyſit ane chyld, minor, and within xxv yeiris of age, without conſent of thair parentis, or vtheris in quhais cuſtodie thay ar, ſalbe pwneiſt to the daithe, without ony pardoun. This Law was ſet doun, *per expreſſum*, in the grit Code of the ſaid King Henrie, Lib. 60, Tit. 2°, Stat. 8°. Lyk as, in the ſevint buik of Papon. *de crimine Raptus*, it is expreſlie ffund and declairit, that ane Woman, for ſeduceing or intyſeing of ane young man to marie hir dochter *clandeſtinè*, was condampnit to the daithe. Lyk as, be the Lawis of Ingland, this cryme is pwneiſt with fyve yeiris impriſſonement, and ane grit fyne at the Princes will; and this Law was ſet doun quhair ony perſone is raviſchet fra thair parentis, tutouris, or guardianis: And of this Law mentioun is maid in the 555 leif of the Regiſtar of the Lawis

of Ingland. Julius Clarus, § *Raptus*, num. 6, ait, '*Raptum viri etiam puniri pena Raptus, ac ſi Virgo rapta eſſet.*' Be the Lawis of the Maieſtie of Scotland, *Quon. Attach.* cap. 95, *de Raptu heredis Maritagium debentis, et ejus pena, &c.* Be the ſelf ſame Law of the Maieſtie, in ſindrie pairtis, Raviſching of Men or Wemen, whois Mariage pertenis to the Prince, is appointit to be criminallie perſewit befoir the Juſtice. And laſt, Raviſcheing is ſa odious ane cryme in Scotland, that the ſamyn is exceptit furth of Remiſſiones, as ane cryme maiſt haynous and deteſtable.—In reſpect of the quhilkis alledgeances, proponit for verificatioun of the propoſitioun contenit in the Summondis, the Dittay is relevant aganis the haill perſones on pannell. And that pairt of the lybell, 'airt and pairt,' is verrie relevant aganis all perſones, and ſpeciallie appointit to be lybellit be Act of Parliament; and the Law is verrie expres in that, that all the perſones that concurris and aſſiſtis the fact quhilk is capitall, ar all culpable as the committeris thairof: Bot in this caice, it is lybellit expreſlie, that Williame Home and William Moffet intyſet and tranet[1] the ſaid Adame furth of Hadingtoun, and convoyit him to Rymmiltounelaw, quhair he was reſſauit be the ſaid Alexander Cranſtoun; quhilk Alexander and Johnne Cranſtoun convoyit him thairfra to Eiſt Niſbet, and thairfra altogidder to Beruik, quhan he was mareit *clandeſtiuè*, as ſaid is, and reſſauit be the ſaid *Laird of Eiſt Niſbet*, and keipit be him quhill he mareit with his dochter, purpoiſlie done to preiudge the ſaid Sir Johnne Home of the double availl of his Mariage; quhilk makis the haill pannell nocht only to be aſſiſteris of the fact, bot airt and pairt, and direct doaris thairof. And to verifie that he was ſeducet, intyſet, and cayreit away aganis his will, repeittis the foirſaid Letter, all writtin and ſubſcryuit with his awin hand; and the Decreit gevin to the Secreit Counſall, ffinding ane wrang done, be the away-taking of him. And thir argumentis ar proponit, nocht only to verifie the propoſitioun of the Summondis, bot alſo to elyde the exceptiones proponit be the perſones on pannell aganis the relevancy of the Dittay.

To the quhilk it is ANSUERIT be the perſones on pannelland thair prelocutouris, that the pannellis allegeance proponit aganis the irrelevancie of the Dittay ſtandis relevant, nochtwithſtanding of all the arguments proponit be my lord Aduocat aganis the ſamyn: ffor, as to the Lawis Ciuile, French Lawis, Inglis (Lawis, and) Municipall Lawis of this realme, thay ar verrie pertinentlie citit be my lord Aduocat, for confirmatioun of the propoſitioun of the Dittay, and to infer the concluſioun thairof, gif the ſubſumptioun war relevant, quhilk is *factum;* ffor it is nocht contravertit with[2] my lord Advocat, that *Raptus Virginis*, Raviſcheing of wemen, *vel crimen Plagij*, as the taking of his Maieſteis frie lege, is capi-

[1] Trained; led away craftily, or by stratagem.

[2] It is not controverted, even according to the doctrine laid down by the Lord Advocate.

tall of the Law, and may be criminallie perſewit at his Maieſteis Aduocattis inſtance; bot the queſtioun in this judgement[1] is, quhidder gif this pannell haif committit ony of thir crymes, at the leiſt quhidder the ſamyn be relevantlie lybellit to infer the cryme cravet; ffor his lordſchip will nocht deny, that of the Law, to aither of thir crymes thair aucht to intervene *vim et violentiam*, and the remanent circumſtances allegit be me ofbefoir, viz. *Abductio per violentiam, Deportatio de loco in locum clandeſtinè, Secluſio parentum*, quhairby nather of thame ſould haif acceſs to the pairtie raviſchet, and detenit, and withaldin fra thair kyn and freindis, *quaſi et tanquam in carcere;* ſua that without thir circumſtances concur in this caice, it can nather be *Raptus* nor *Plagium;* and conſequentlie, thay can nocht pas to the knawlege of ane Aſſyſe thairfoir. As to the inſtances citet be my lord Aduocat, betuix *Dumbrek* and *Mr Alex*[r] *Gibſone*, nixt betuix vmq[le] *Thomas Maiſter of Glammis* and *the Erles of Huntlie, Craufurd*, and *Bothuell*, thay militat nathing in this caice; ffor as to *Dumbrek*, he expreſlie committit *crimen Plagii*, in taking of the Kingis Maieſteis frie lege, quyetlie and clandeſtinlie, by[2] all his freindis knawlege, be plane violence and force, being accumpaneit with ten or tuelf perſones in hoſteill and weirfair maner, with wappones prohibeit to be borne or worne, tranſpoirting of him from place to place vnder nycht, debarring his freindis to haif acces to him, and be carieing him to the Caſtell of Harbottill, in Ingland; ſua that the pwneiſchment inflictit vpone him was dew, accoirding[3] to the fact. As to the ſecund inſtance, anent *the Maiſter of Glames*, it lykwayis far les militatis in this caice, ffor it is nottour, as my lord Juſtice, his Aſſeſſouris,[4] and my lord Aduocat knawis rycht weill, that *the Erles of Huntlie, Craufurd*, and *Bothuell*, being banded againſt the Kingis Maieſteis authoritie, deprehendit *the ſaid Maiſter of Glammiſs*, in the Kingis Maieſteis high way, chaiſſit him to the Hous of Kirkhill, and pat ffyre thairto, quhilk inferris *crimen Plagij* of the Law, and ane gritter puneiſchment: And as to that part of the Dittay, beiring that the ſaid Adame was intyſet and ſeducet, that is nawayis relevant to infer ane cryme, ffor ffraud is nocht capitale, of[5] the Municipall Law of this realme, nor yit accoirding to[6] the practique of the ſame: And as to the Lawis citet to infer the ſamyn to be *crimen capitale*, and ſpeciallie the Law of the Maieſtie, *Quon. Attach.*, I oppone[7] the daylie cuſtome of this Judgement, the Municipall Law of this realme, and ſpeciallie the Act of Parliament in anno 1612, ffor it is expreſlie ſet doun in the Dittay, that the ſaid Adame Frenche come with the ſaid Williame Home out of the ſaid Mr Williame Boweis hous, the ſamyn can infer na Rapt; nocht only

[1] Court; tribunal. [2] Without; against; beside. [3] Corresponding; conformable. [4] It was the uniform custom, in all cases of difficulty and interest, for several Members of the Privy Council to sit in judgment with the Justice, as Assessors. Their names are only occasionally inserted in the Record in remarkable Cases. [5] According to. [6] Corresponding with. [7] Oppose.

for the argumentis, that he was, *ſui juris*, paſt the age of xiiij yeiris, bot his being in companie with his kynſmen, can nocht infer ane Rapt, ſpeciallie, quhair he is nocht detenit *per vim nec violentiam* fra the preſens of his freindis. And quhair as, my lord Aduocat affirmes the Mariage to haif bene clandeſtine, and ſa, nocht lauchfull, the contrair is affirmit—it was nocht clandeſtine; becaus thair preceidit Proclamatioun of Bandis,[1] the mariage was maid publictlie in the paroche Kirk, within the town quhair the parentis of the Gentilwoman had reſidence, off the ſpeciall conſent and aſſent of the ſaid Adame; the ſaid Williame Home being preſent at the time of the geving of his conſent, and in companie with him, being his mother-brother. And ſua, thair being nathing qualifeit in the ſubſumptioun of the Dittay to infer ony violence, the pannell can nocht pas to the knawlege of ane Aſſyſe thairfoir: ffor as to thais wordis ſet doun in the Dittay, that thai wald nocht ſuffer him to pas bak agane, thair is nathing producet to inſtruct that point of the Dittay, nor na pairt thairof, tuicheing the allegit fact; ffor, be the Cowmone Law and diuerſe Doctouris, ſic as Julius Clarus, Baldus, Hoſtienſis, and remanent Doctouris treittand *de crimine Plagij* vel *Raptu Virginis*, thay concluid the ſamyn nawayis to be ane cryme quhairvpone ony pairtie may be accuſet criminallie, except thair concur violence and violent deidis to that effect. This is cleir in the Cowmone Law, Digeſt. *de Incendio, Rapina, et Naufragio*, &c.; ſua that the haill Doctouris and Cowmone Law concludis, that *nunquam ſit Raptus ſine vi et violentia. Igitur*, &c.

The Perſewaris repeitis thair former anſueris, with the haill argumentis proponit for verificatioun of the propoſitioun of the Summondis: and lykwayis repeitis the Summondis, and haill pairtis thairof, quhilkis ar relevantlie lybellit, as ane direct anſuer to the laſt argument proponit. And as to the conſent of the ſaid Adame, anſueris as ofbefoir, that ane fact capitall being committit, the pairtie aganis quhome the ſamyn is done may mak na[2] confeſſioun nor declaratioun to the prejudice ather of the Kingis Maieſtie, or the pairtie interreiſt.[3] *Igitur*, &c.—To the quhilk it is anſuerit, that the pannell declairis, that as yet thai haif proponit na alledgeance vpone ony contrair Confeſſioun of the pairtie; bot gif ony ſic allegeances he hes to propone, reſerues the ſamyn to be proponit *ſuo loco:* And thairupoun aſkit inſtrumentis.

The Justice continewis Interlocutour vpone the allegeances foirſaidis, and anſueris maid thairto, to the morne, the nynt of November inſtant. The pairteis and Aſſyſe wairnit, *apud Acta:* And Ordanet the pannell to find Cautioune for thair compeirance the morne, to the effect foirſaid.

The Laird of Eiſt Niſbet elder, become ſouertie for the entrie of Alexander Cranſtoun of Burnecaſtell, vnder the panes contenit in the Actis of Parliament.

[1] Bans. [2] Is not entitled to make any confession, &c. [3] Interested.

—The ſaid Alexander become cautioune for the entrie of Eiſt Niſbet, Johnne Cranſtoun, Williame Home, and Williame Moffet, the morne, vnder the panes, &c.

Nov. 9.—THE JUSTICE, befoir Interloquitour to be pronouncet be him in the matter, Ordanit the perſones on pannell, and ſiklyk the ſaid *Sir Johnne Home of North Beruik, knycht*, perſewar, to find cautioun for keiping of his Maieſteis peace, in nocht trubilling and moleſting of vtheris,[1] by way of deid, in thair bodeyis, landis, or guidis, vtherwayis nor by ordour of Law and juſtice, under the panes following, viz. The ſaid *Laird of Eiſt Niſbet*, the ſaid *Sir Johnne Home* of North Beruik, and *Alexander Cranſtoun*, ilk ane of thame vnder the pane of fyve thowſeand merkis; and the ſaidis *Johnne Cranſtoun* and *Williame Home* vnder the pane of I^m (1000) merkis, for ather[2] of thame.

James Fauſyde, younger of that Ilk, become plege and ſouertie for Sir Patrik Chirneſyde; Johnne, Maiſter of Cranſtoun, for Alex^r Cranſtoun; Alexander Chirneſyde, younger of Eiſt Niſbet, for Johnne Cranſtoun; and the ſaid Alexander Cranſtoune of Burne Caſtell, for Williame Home, that thai ſall keip his Maieſteis peace, and that Sir Johnne Home of North Beruik, kny^t, ſall be harmles and ſkaithles of thame in his body, landis, poſſeſſiones, and guidis, and onnawayis[3] ſall be moleſtit nor trubillit be thame or ony of thame thairintill, nor be na vtheris of thair cauſing, ſending, hounding out, command, reſſet, aſſiſtance, or ratihabitioun, quhome thay may ſtop or lat,[4] directlie nor indirectlie, vtherwayis nor be ordour of Law and Juſtice, &c.

Sir George Home of Manderſtoun, Johnne Home, younger of Aytoun, and Dauid Home of Wedderburne, younger, become pleges and ſouerteis, coniunctlie and ſeuerallie, for Sir Johnne Home of Northberuik, that Sir Patrik Chirneſyde, &c. ſall be harmeles and ſkaithles, &c.[5]

(Nov. 20.)—MY LORD ADUOCAT, befoir Interloquitour, declairis he will nocht inſiſt any forder at this preſent, in perſute of the perſones on pannell, for the crymes lybellit: And in reſpect of the haynouſnes of the fact, and evill preparatiue[6] and conſequence quhilk may follow, deſyres that cautioun may be tane of the defenderis for thair entrie, vpone a fyftene dayis wairning, to abyde tryell for the ſamyn, &c.—It is allegit be the pannell and thair prelocutouris, that in reſpect of the allegeances proponit, alſweill dilatour as peremptour in this cauſe, and of my Lord Aduocattis anſueris maid thairto, quhilk lyis at Interloquitour, his lordſchip, as perſewer, can nocht be hard to reſeill[7] fra this perſute; nather can the pannell be aſtricted to ffind cautioun, ſeing thay ar willing, vpoun my lord Juſtice Interlocutour, to defend thame ſelffis, as accoirdis of the Law: And in all humilitie abydis his lordſchipis Interloquitour thairupoune.

[1] Each other. [2] Each. [3] In nowise. [4] Hinder. [5] In the same terms as above. [6] Precedent; example. [7] Resile; draw back.

Mr Alex^r Peiblis, as prelocutour for Adame Frenche, perſonallie preſent, produces ane Supplicatioun to my lord Juſtice, for his lordſchipis informatioun in this caus, anent the ſaid Adames paſſing away ffurth of Hadingtoun with the pannell, and that the ſamyn was of his awin frie will and conſent; and deſyret the ſamyn to be red, and to remane in proces; and takis inſtrumentis vpone the productioun thairof.—It is allegit be my lord Aduocat, that eftir his Declaratioun aboue writtin, that he deſiſtis fra this perſute, the perſones on pannell, and far les the ſaid Adame Frenche, quha is nawayis convenit, ather as perſewar or defender in this matter, can be ſufferit to produce ony informatioun or vther allegeance in this cauſe; nather aucht my lord Juſtice to admit the productioun thairof, eftir the Declaratour foirſaid.

The pannell deſyret the Supplicatioun foirſaid to be red, befoir my Lord Juſtice geve any Interloquitour, quhidder my lord Aduocat may reſeill *pure et ſimpliciter, vel pro loco et tempore.*—The Supplicatioun gevin vp agane to the pannell, at command of my lord Juſtice.

The Justice ffindis that my lord Aduocat may verrie weill deſiſt fra this perſute and tak vp his proces, ſeing he is perſewar of the caus; and that, nochtwithſtanding of the alledgeance maid be the pannell in the contrair.

The pannell takis inſtrumentis of the productioun of the former Supplicatioun be Adame Frenche, and that the ſaid Adame Frenche is perſonallie preſent, reddie to declair, baith be woird and writ, that he paſt away with his Motherbrother of his awin frie will and conſent.—My lord Aduocat, in the contrair, ſayis the ſamyn ſould nocht be admittit.

The parties find caution 'that thai ſall compeir befoir the Juſtice, or his deputis, the thrid day of þe nixt Juſtice-air of the Scherefdome quhair thai duell ["Beruik"], or ſoner vpone xv dayis wairning, to vnderly the law for the crymes aboue ſpecifeit; vnder the panes contenit in the Actis of Parliament.'

Slaughter.

Nov. 13.—Robert Robertsoune, ſeruitour to James Fawſyde, younger of that Ilk.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^le Johnne Fauſyde, ſervand alſo to the ſaid James Fauſyde, be ſtreking him in the bellie with ane knyfe, within the barne of Fauſyde, vpone the tent day of November inſtant; quhairof, vpone the tuelf day of this inſtant moneth, he deceiſſit.

Persewar, James Fauſyde, Younger of that Ilk, as maiſter.

The pannell Confeſſis the cryme, and craves Godis and the pairteis pardoun, and mercie for the ſamyn.

VERDICT. The Assyse, all in ane voce, be the mouthe of Johnne Hall in Prestoune, chanceller, ffand the said Robert to be Culpable and conuict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Falset—Perjury.

Dec. 20.—ALEXANDER CUIK, Notter, Schereff clerk of Beruik.

Dilaittit of Falset, committit be him in his office of Notarie, in geving out tua seuerall extractis of ane Seasing, of tua seuerall daittis: And of Periurie, eftir he was solempnelie suorne, in presens of the Lordis, to declair the veritie in the premissis.

DITTAY *against the Pannell.*

FORSAMEKILL AS, it is expresslie provydit, statute, and ordanit, be dyuerse Actis of Parliament, maid aganis false Notteris, and false periuret Witnessis, that gif ony Notter committis ffalset, and beis convict and fund giltie pairof, (he) sall be pwneist to the daithe: And siclyk, quhair ony Witnes depones ffalslie, sall lykwayis be pwneist, be pearceing of pair tungis, and escheiting of all pair moveabill guidis; and forder pwneischment to be inflictit in the persone of pe saidis ffals Witnesses, at the sicht of and discretion of pe Judge, accoirding to the qualitie of pe fact: As pe saidis Lawis and Actis of Parliament in thame selffis proportis. Nochtwithstanding quhairof, it is of veritie that pe said *Alexander Cuik*, being imployit as Notter be *Johnne Home of Slegden* for geving Seasing to him of pe Landis of Eister Pleulandis, giftet and disponit to him be our Souerane lord, as vaikand[1] in his Maiesteis handis be pe ffforsaltour of vmq^le^ *Frances Erle Bothuell;* and that, conforme to ane Precept direct furth of pe Chancellarie to Adame Cokburne, Schereff depute of pe Scherefdome of Beruik for pe tyme, vnder pe Quarter Seill, for geving Seasing to pe said Johnne Home pairof; and to extract and draw furth to him ane Instrument pairupoun; the said Alexander maist ffalslie and erroneouslie, for his awin gane and lucre, extractit out of his Prothogoll[2] tua seuerall Extractis of pe foirsaidis Instrumentis of Seasing, of tua dyuerse daittis, the ane of pe dait pe xxiij of Februar 1592, and the vper in anno 1593: As pe saidis tua Extractis producet, vnder pe saidis Alexanderis subscriptioun, beiris. Lyk as, in regaird of pe said ffalse Extract of pe foirsaid Seasing, ane actioun of Improbatioun being intentit, and as sit depending befoir pe Lordis of Sessioun, at pe instance of his Maiesteis Aduocat, and *Walter, Lord of Baleleuch*, as heritour of pe Lordschip and barrony of Haillis, quhairof pe saidis landis of Eister Pleulandis ar pairt and pertinent, and lykwayis at pe instance of *Alexander Haitlie*, burges of Ed^r^, as takisman pairof, aganis pe said *Johnne Home*, ffor improving of pe foirsaid Instrument of Seasing, extractit be pe said *Alexander Cuik*, and gevin to pe said Johnne Home of the saidis Landis; and pe said Alexander being dyuerse tymes summond in pe said actioun of Improbatioun, to haif gevin Testimonie and declaratioun pairanent; and, in end, compeirand befoir pe saidis Lordis, vpone the tuelf day of December instant, and being examinat in pair lordschipis haill presens, anent pe trew dait of pe foirsaid Instrument of Seasing, and being solempnelie suorne to declair pe verritie pairin, the said *Alexander Cuik* than affirmet, constantlie, that pe trew dait of pe said Seasing was vpone pe xxiij day of Februar, 1591, to the quhilk he was Notter; and abaid at pe Extract of pe Instrument gevin furth be him to pe said Johnne Home pairupoun; and pairwith declairit that pe vther Extract of pe same Seasing, drawin furth be him to *Alexander Haitlie*, beiring dait pe xxiij of Februar, I^m^.V^c^.

[1] Lat. *vacare.* Fr. *vaquer.* [2] Protocol-book—an official Register ordained to be kept by every Notary.

fourſcoir threttene, was ffalſe; And þe ſaid Alex^r being þaireftir, vpone the xviij and xix dayis of þis inſtant moneth, re-examinat, in þe ſaidis Lordis preſens, and ſolempnelie ſuorne to declair þe verritie, concerning þe dait of þe ſaidis tua Extractis, he vareit fra his former Depoſitiones, maiſt impudentlie: Lyk as, his Prothogoll buik was viciat be him, in þe dait foirſaid, ſcoiring out 'primo,' and putting in 'tertio;' and þairefter ſcoiring furth 'tertio,' and wryting agane 'primo.' Quhairin he hes declairit him ſelff to be ane ffals and infamous Notter; and be his contrair Depoſitiones, maid in his examinatioun, to be ane manifeſt ffals and menſuorne Witnes: Lyk as, þe ſaidis Lordis of Counſell, be þair Decreit, gevin vpone his tryell and Examinatioun, hes fund þe ſaid Alex^r to be ane ffals Notter and manifeſt Periuret Witnes: As the Extract þairof, vnder þe ſubſcriptioun of *my Lord Clerk of Regiſter*, daitit þe xix day of þis inſtant, togidder with his Depoſitiones, maid in preſens of þe ſaidis Lordis, beiris. Lyk as, for verifeing of his ffalſet aboue writtin, þair was ane Band maid be him to the ſaid *Alexander Haitlie*, quhairin he obleiſt him ſelff to ſtand and abyde at the Inſtrument extractit be him, daitit þe 23 of Februar, 1593, he procureing his Maieſteis Remiſſioun for þe ſamyn. For þe quhilk ffalſet and Periurie, committit be þe ſaid Alexander, he aucht and ſould be pwneiſt to þe daith, in example of vtheris.

Assisa.

James Levingſtoun of Jeriſwoid,
George Logane of Bonytoun,
James Naſmyth of Poſſo,
Joſeph Douglas of Pompharſtoun,
Johnne Gairdin, merchand burges of Edinburghe,
James Douglas in Lugtoun,
Jo^n Keir, mercheand burges, Ed^r,
Patrik Somervell, mercheand burges thair,
Robert Halyburtoun, mercheand burges thair,
Jo^n Keir, ſkipper, burges thair,
Johnne Reid, indueller in Leyth,
Thomas Mulliekyn, mercheand burges of Edinburghe,
James Halyburtoun, mercheand burges thair,
Jo^n Mitchelhill, mercheand burges thair,
Rob. Moffett, merch^d burges thair.

The Aduocat takis inſtrumentis of the ſweiring of the Aſſyſe: And for verifeing of the Dittay, producet the tua Inſtrumentis of Seaſing, vnder the pannellis ſubſcriptioun, baith to ane effect, of dyuerſe daittis: Producet lykwayis, the pannellis ſeuerall Miſſiue Letteris, direct to *Alexander Haitlie*, beirand, that the Seaſing extractit to him, of the dait the xxiij of Februar, I^m.V^c. fourſcoir threttene, was the trew Extract, and that he wald abyd thairat: Producet alſo, dyuerſe Letteris, writtin be the pannell to *Williame Ker*, beirand that the Seaſing extractit to him, of the dait the xxiij of Februar I^m.V^c. fourſcoir ellevin, was the trew Extract, and that he wald abyde thairat: And ſiclyk, producet ane Letter, direct be him to the Lordis of Seſſioun, being ſeik for the tyme, all writtin and ſubſcryuit with his hand, teſtefeing the ſaid Extract gevin to the ſaid *Williame Ker*, daitit in anno 1591, to be the only trew Extract: Producet alſo, the pannellis Depoſitiones, maid be him in preſens of the Lordis, beiring the Confeſſioun of the Extract of the Seaſing in anno 1591, to be the trew Extract, and the vther, of the dait 1593, to be ffals: And vpone his Re-examinatioun, beiring the Seaſing gevin in anno 1593 to be trew, and the vther in anno 1591 to be ffals: Togidder alſo with his Prothogoll-buik, alſo producet, quhair it is twyſe mendit in the dait of the ſaid Seaſing. And laſt, producet the Lordis Decreit, ffinding the pannell to be ane ffalſe Notter, and ane manifeſt

periuret Witneſs. And vpone the productioun thairof, aſkit inſtrumentis; as alſo vpone the pannellis Judiciall Confeſſioun of the ſaid ffalſet.

Quhilk crymes he Confeſſit, judiciallie, in thair preſens and audience, to be of verritie; and cravet God mercie for the ſamyn.

VERDICT. The Aſſyſe, all in ane voce, be the mouthe and declaratioun of the ſaid George Logane of Bonytoun, chanceller, ffand, pronuncet, and declairit the ſaid Alexander Cuik to be ffylit, culpable, and convict of the ſaidis crymes, ſpecifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair, as ane ffalſe Notter and Periuret Witnes, to be Hangit vpone ane gibbet, quhill he be deid; and all his moveabill guidis to be eſcheit, &c.

[*Sir Williame Heart of Preſtoune, Juſtice-Depute.*

ASSESSOURIS TO THE JUSTICE, nominat be the Lordis of Secreit Counſell, conforme to thair lordſchip Actis of Counſell, daitit the xx of Februar, 1617.

Sir Richard Cokburne of Clerkingtoun, kny^t, Lord Previe ſeill;
Sir Williame Levingſtoun of Kilſythe, kny^t;
Sir Alexander Drummond of Meidhope, kny^t;
Sir Andro Hammiltoun of Reidhous, kny^t; and
Sir James Skene of Curriehill, kny^t.[1]]

Usurping his Majesty's Authority—Murder under Colour of Law.

Feb. 26, 1617.—GEORGE GORDOUN of Geicht.

Dilaitit of Vſurpation of our ſouerane lordis authoritie, in the violent and vnlauchfull taking of vmq^le Frances Hay, ſone to vmq^le George Hay of Ardlethame, ffurth of the Place of Logyruif, pertening to Williame Hay, ffiear of Brunthillis, his brother-in-law, vpone the xviij day of December, 1615 yeiris; bringing him as ane captiue and priſſoner to the burgh of Aberdene; keiping and detening him in captiuitie, in a priuat hous or ludgeing of the ſaid Laird of Geicht, within the Gallowgait, callit 'the Bony wyfe's Inn,' for the ſpace of ffourtie aucht houris, or thairby, &c.[2]

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our ſouerane lord, for his Maieſteis intreis; Mariorie Keith, as mother to the ſaid vmq^le Frances Hay.

PRELOCUTOURIS in defence, The Laird of Clwny, (Alexander Gordoun,) the Laird of Strathdoun, Mr Thomas Nicolſone, elder, Mr Alexander Peibles, Mr Robert Fairlie, Aduocattis.

The JUSTICE and ASSESSOURIS, with the advyſe of ather pairtie, alſweill perſewar as defenderis, continewis this dyet to Fryday nixt, the laſt of this inſtant. The perſones of Aſſyſe wairnet *apud Acta;* ilk perſone vnder the pane of thre hundreth merkis.

Alexander Gordoun of Clwny become ſouertie for the entrie of the ſaid Laird of Geicht, &c., vnder the pane of ffyve thowſeand merkis money.

[1] All ordinary Lords of Session, with the exception of Sir Alexander Drummond, who was an Extraordinary Lord. [2] See Aug. 28, 1616, where the Dittay is inserted. The great importance of this remarkable Case induces the Editor to preserve all the useful information which is to be gathered from the Records.

[*Sir Williame Heart and Mr Alexander Coluile, Juſtice-Deputes.*]

Perſewaris, Sir Williame Oliphant of Newtoun, knyt; Mariorie Keith, as mother; George Hay, as brother to the defunct; Williame Hay, ffiear of Brunthillis, George Hay, his brother.

Prelocutouris in perſute and fortificatioun thairof, Frances Erle of Errole, Laurence lord Oliphant, My Lord Zeſter, Alexander Keith of Ludquharne.

Prelocutouris in defence, George Marqueis of Huntlie, My lord of Eglingtoun, My lord Viſcount of Lauderdaill, My lord Ochiltrie, Mr Thomas Nicolſoune, and Mr Alexander Peiblis.

Feb. 28.—The lord Aduocat producet his Maieſteis Warrand, anent the perſute of the pannell for the crymes contenit in the Summondis, daitit at Quhytehall, the 17 of ffebruare inſtant; and deſyret the ſamyn to remane in proces.

Eftir reiding of the Dittay, it is allegit be the pannell and his prelocutouris, that thair is dyuerſe ſubſtantiall heidis contenit thairintill, quhilkis ar nawayis inſert in the coppie gevin to thame be the Meſſinger executour of the Summondis; and producet the coppie, ſubſcryuit be the Meſſinger, for verificatioun thairof: And in reſpect that na autentik coppie is delyuerit, deſyres ane continuatioun of this dyet to the morne, to the effect thai may be advyſet with the Dittay, and vpone thair Defenſſis to be proponit be thame aganis the ſamyn.—It is anſuerit be my lord Aduocat, that the allegeance foirſaid aucht to be repellit, and na continuatioun ſould be grantit, in reſpect of the Summondis and Executiones thairof, producet, beiring ane autentik coppie to be delyuerit to the pannell: And forder, thair was na neceſſitie to charge the pannell, or to geve him ane coppie of the Summondis, bot only to his cautioneris, quha become ſouertie for his entrie to vnderly the law for the crymes lybellit.

The Juſtice Repellis the allegeance; in reſpect of my lord Aduocatis anſuer.

Thaireftir the pannell, nochtwithſtanding of my lord Juſtice interlocutour, deſyres ane convenient tyme to be grantit to thame to reid and conſider the Summondis producet; and that thai may haif libertie to remoue thame ſelffis apairt, to aduyſe thairupoun.—Quhilk the Juſtice grantit; and ordanit the Summondis to be gevin vp to the pannellis prelocutouris, to be advyſet thairupoune.

It is allegit be Mr Thomas Nicolſoun, for the pairt of the pannell, that he did na wrang in taking of ffrances Hay *privata authoritate;* becaus it is of verritie, that vpone Fryday, the fyftene day of December, immediatlie preceiding the day of his allegit taking, quhilk was vpone the xviij day of the ſaid month, the ſaid vmqle *Frances Hay* had ſlane vmqle *Adame Gordoun,* brother to the pannell, for the quhilk he fled; and ſa, the ſaid Laird of Geicht, being the avenger of bluid, viz. the eldeſt brother of the ſaid Adame, it was lauchfull to him to ſerche and ſeik the malefactour, to the effect he mycht be preſentit to the Juſtice: Lyk as, be Act of Parliament, maid in the dayis of King James the ffirſt, of worthie memorie, Parliamento ſexto, cap. 89, the Scheref and haill cuntrie is

commandit to ſerche and ſeik the man-ſlayer, being certifeit of the Slauchter; and ſa, mekill mair mycht the avenger of bluid, be doing na wrang in the taking: Lyk as, eftir the taking of him, he preſentit him to the Schereff but[1] ony hurt of ſence, or iniurie done to him: And that it is lauchfull to ony of the people, alſweill as to the avenger of bluid, it is cleir, be ane verrie trew example; ffor gif ane Theif ſteill ony mannis guidis, it is lauchfull to the perſone fra quhome the guidis ar ſtowin, to convene his kyn and freindis, and raiſe the cuntrie, and perſew the Theiff ſa lang as he is *in fuga*, ay and quhill he apprehend him, or put him out of the cuntrie; and this he may do but ony Warrand of ane Magiſtrat; as is cleir and nottour be the daylie practique of the cuntrie: *Ergo*, in this cryme of Slauchter, quhilk is of far gritter importance than ſteilling of guidis, it was lauchfull to ony of the people, *multo magis* the avenger of bluid, to apprehend the malefactour, and delyuer him to the Juſtice: And as it was lauchfull to the pannell to ſerche, ſeik, tak, and apprehend the malefactour, and delyuer him to the Juſtice, evin ſa it was lauchfull to him to do the ſamyn with conuening of his freindis, (nawayis granting he did the ſamyn,) and with quhatſumeuir airmes; ffor vtherwayis, this abſurditie ſould follow, that the malefactour ſould eſcaip, and the innocent perſone ſould be ſlane; in ſa far as, gif the innocent perſone ſall preiſe to apprehend the malefactour airmet with hagbutis and piſtolettis, namelie, haifing the benefit of ane houſe, it war eaſie for him to ſla ſic as ſocht him; and ſa he ſould nocht be apprehendit. *Secundo*, for this caus he did na wrang, becaus it is an reule of the Law, that *conceſſo aliquo extremo, conceduntur omnia media, per que pervenitur ad illud;* than it is ſubſumet, gif it was lauchfull to tak the man-ſlayer, as is afoir provin, *ergo*, it was lauchfull to vſe all the midiſſis[2] be the quhilk he ſould be taken, baith of airmour and vtherwayis.

It is anſuerit be my lord Aduocat, to the *firſt* pairt, anent the avenger of bluid, thair is nather Law nor reſſone can mak *the Laird of Geicht* the avenger of bluid, bot only the Kingis Maieſtie, his Juſtice, and vtheris haifing power and authoritie of his Maieſtie. As for the argument proponit vpone the Act of Parliament maid in the dayis of King James the ffirſt, the allegeance foundit thairupoun is altogidder irrelevant, impertinent, and altogidder repugnant and diſconforme to the Act; be the quhilk, it is ſtatute, that the Man-ſlayer ſould be perſewit be the Schereff, and the cuntrie to concur; and gif the malefactour be tane be the Schereff, he ſould be put in ſure firmance, quhill[3] the Law be done vpone him; and gif he be tane reid-hand,[4] to be done with that ſone.[5] It is nevir allegit that the Schereff followit the allegit malefactour, nather that he was

[1] Without. [2] Means. [3] Until. [4] With the red or bloody hand; instantly after commission of the fact. [5] Sun; day; before sunset of that day.

tane with reid-hand; ſua that the allegeance is altogether irrelevant, quhilk is founded vpone that Act, as direct repugnant thairto: And as to that pairt of the allegeance, beirand that the Laird of Geicht tuik and apprehendit the allegit malefactour, that alledgeance contenis ane grit abſurditie, haiſing nather Warrand, grund, nor fundament, nather of the Lawis of the realme, nor of the Ciuile Law; ſeing, be the Lawis of this realme, the Schereff is appointit to follow the Man-ſlayer; and be the Ciuile Law, it is nocht leiſum[1] to ony privat man to tak and apprehend ony perſone, without ane Commiſſioun and Warrand frome the Magiſtrat: Leg. *Neminem*, Cod. *de exhibendis Reis*, lib. 9, Tit. 3, Leg. vltima, *Neminem exhibendum eſſe in judicio precipimus, niſi de cuius exhibitione Judex pronunciauerit.* Item, Bartolus, ad dictam Legem: Et Domaderius, cap. 15, num. 40, idem aſſerit: Et toto titulo, Codice *de Plagiariis:* Et lege *Raptores*, de Epiſcopis et Clericis: Item, Julius Clarus, § finali queſt. 31, in principio: Be the quhilkis premiſſes, it is cleir, that ane privat perſone, and ſpeciallie the pairtie, had na power to tak the allegit malefactour. As to the argument proponit vpone the example of the proſecutioun and following of ane Theif, it is altogidder impertinent to this purpois; ſeing the Theif is followit, *in ipſo actu*, immediatlie eftir the committing of the cryme, with the guidis and geir of the followeris; quhilk is permittit be the Lawis of this realme, be the Actis of Parliament maid thairanent, and the vniuerſall conſuetude of the ſame, it is lauchfull to ony man, in following of his awin guidis and geir, to apprehend the Thevis; and albeit the Theif be ſlane in the following, the Slayer is maid frie be the lawis of the realme. It is abſurditie to think that the Schereff him ſelff may follow ony man committer of the Slauchter, and inſtantlie put handis in him, at his awin hand, *niſi in flagranti crimine*, quhilk is nocht allegit in this caice; and albeit he war tane *in flagranti crimine*, or reid-hand, as the Act of Parliament beiris, the Law ought to be done vpone him within that ſone. And quhair it was allegit, that gif it war lauchfull to the Laird of Geicht to perſew or tak him, it was lauchfull to tak him with convocatioun of our ſouerane lordis legis, and with wapponis forbiddin; it is anſuerit, that the firſt propoſitioun is altogidder abſurd, in reſpect of the firſt anſuer maid be the perſewaris; and conſequentlie, the taking with convocatioun of his ffreindis, and forbiddin wappones, ſeing he had na authoritie, nather to tak, nor beir forbidden wapponis: In reſpect quhairof, the firſt allegeance, and haill argumentis thairin contenit, aucht to be repellit.

It is duplyit for the pannell, that his allegeance proponit ofbefoir ſtandis verrie relevant, nochtwithſtanding of ony anſuer maid thairto; and quhair the ſamyn is querrellit,[2] that thair is no law that makis the avenger of bluid, bot

[1] Lawful. [2] Disputed; argued.

the famyn pertenis only to the Kingis Maieftie, it is anfuerit, that the pannell makis no queftioun thairin *quo ad executionem;* bot the Law callis him the ane avenger of bluid, *quia habet jus profequendi fecundum formam juris.* As to that pairt, alledgeing the difconformitie betuix the allegeance and the Act of Parliament, it is duplyit, that thai ar verrie conforme; becaus be baith the Actis allegit, the Kingis haill legis ar commandit to concur and affift the taking of the malefactour with the Scheref, *ergo,* thair was na wrang done, feing the Schereff was in ferching; and in refpect that he could nocht ferche in all pairtis; and the notorietie of the fact, and the maliefactouris fleing, being *in fuga,* and fa taking the cryme vpone him, quhatfoeuer was done be the pannell man be eftemit as concurring with the Sher e fpeciallie, haifing refpect, that the pannell tuik the malefactour but ony wrang or hurt of his body, or iniurie done to him, and referuit him faif but ony iniurie, quhill he was prefentit to the Schereff, &c.[1]

THE JUSTICE, with advyfe of his Affefforis, Continewis all forder difputatioun in this mater to the morne, the firft of March, 1617.—The Laird of Clwny again becomes his furety.

[*Mr Alexander Coluile, Juftice-Depute.*]

DECLINATURE OF THE JUDGE.

Mar. 1.—IT is allegit be the pannell, that Mr Alexander Coluile can nocht be Judge in this caufe, in refpect he is fourtis of kyn to the Countes of Errole; my Lord of Arrole, hir hufband, being perfewar, viz. The faid Mr Alex^r Coluiles grandame was ane dochter of the Houfe of Lochlevin, quha is ane; the faid Mr Alexanderis guidfchir, tua; the faid Mr Alexanderis father, thre; and him felf the fourt: And referris the probatioun of this rekning to Mr Alexanderis awin ayth of verritie.—It is anfuerit be my lord Aduocat, that this Declinatour can nocht be reffauit this day, becaus Mr Alexander Coluile, being Juftice-depute in this Judgement, quhilk is ane ordiner and Supreme Jurifdictioun, na declinatour aucht to be proponit aganis him; at the leift, na kinreid[2] fould be ony caus to declyne him. *Secundo,* the declinatour can nocht now be reffauit, becaus the Court being fenfit yefterday, he fitting as Judge, the perfewaris and defenderis compeirand with thair prelocutouris, thair is ane Interlocutour pronuncet in this caus; and eftir pronunceing thairof, ane peremptour exceptioun (was) proponit be the pannell aganis ane member of the Dittay; eftir the quhilk, ane declinatour can nocht be proponit.

To the quhilk it is anfuerit be the pannell, that the declinatour exceptioun

[1] It has not been deemed expedient to insert the whole of the arguments of the parties in this keenly contested case, which are extremely prolix, and occupy above sixty pages of the Record. The opening of the pleadings has been given as a specimen of the procedure of the Court at this early period.

[2] No objection on the ground of kindred or relationship.

ſtandis relevant, nochtwithſtanding of my lord Aduocattis twa anſweris; namelie, the *ffirſt* beirand, that Mr Alexander is ane Ordiner Judge of this Court, creat, electit, and ſuorne; that pairt of the anſuer *non relevat;* becaus the creatioun and admiſſioun of Mr Alexander Coluile takis nocht away the pannellis exceptioun declinatour, *ex ſuperveniente cauſa,* vpone conſanguinitie of bluid to the perſewar; ffor than it ſould follow, that in an actioun perſewit befoir the Lordis of Seſſioun, quha are ſupreme Judges of the land in ciuile cauſſis, at the inſtance of ane perſone, quhais brother is ane of the Lordis of Seſſioun, it ſould follow that he ſould be Judge to his brother, perſewer in the caus perſewit be him aganis ane vther, quhilk can nocht be: As to the *ſecund* member of the anſuer, beirand, that the pannell can nocht be hard to propone this Declinatour this day, be reſſone that in ane Court haldin yiſterday in the ſamyn caus, Mr Alexander ſat as Judge, befoir quhome the pannell proponit dyuerſe exceptiones dilatour and peremptour, aftir the proponing quhairof, the pannell can nocht be hard to propone ony exceptioun declinatour, be reſſone that ane exceptioun declinatour is the firſt exceptioun ſould be proponit in judgement; —to the quhilk it is anſuerit, that nochtwithſtanding of the ſaid ſecund anſuer, the excepientis declinatour ſtandis relevant aganis the ſaid Mr Alexander Coluile, be reſſone thair was ane ſufficient judgment and judicatorie eſtabliſchet yiſterday by[1] the ſaid Mr Alexander, to wit, Sir Williame Heart, ordiner Juſtice, quha ſat in judgement, and pronuncet Interloquitour in this caus; ſa that this exceptioun, gif it had bene proponit yiſterday, could nocht be reſpectit, becaus the Judgement had bene ane perfyte Judgment without him, quhilk is nocht this day in this caice; and ſua, be the preſens yiſterday of the ſaid Sir Williame Heart, and his abſence this day, the caice is alterit: In reſpect quhairof, the exceptioun ſtandis relevant, nochtwithſtanding of the anſuer. And forder, quhair it is anſuerit, that Mr Alexander Coluile is Juſtice-generall, *in criminalibus,* thair can no exceptioun of conſanguinitie be proponit aganis him as depute, it has nather Law to ſuſtene the anſuer, and it is aganis the daylie practique; ffor thair is na Judge in Scotland that hes that priuilege to ſit *in cauſa conſanguinei,* bot only the Lordis of Seſſioun; quhilk is done of neceſſitie, for vtherwayis thair will be no judgement thair, quhilk is nocht in this caice,—ffor the removeing of ane only Judge may be ſuppleit be the ſitting of ane vther, *vbi non eſt penuria:* And this was practizet in the gritteſt pannell that was in our dayis, betuix the Lairdis of Caddell and Ardkinglas, for the ſlauchter of the Laird of Caddell; in the quhilk, the Juſtice-depute was ſet,[2] as being depute to the Erle of Ergyle, quha bakit[3] the perſute; lyk as, the Kingis Maieſtie haveing choſin dyuerſe Judges *ſucceſſiué* eftir vtheris, thay war all declynit, pairtlie vpone conſanguinitie with the Erle of Ergyle, and pairtlie as being penſioneris to ſic as aſſiſtit

[1] *Forbye;* besides; independent of. [2] Declined. [3] Backed; countenanced; supported.

the perſute; and namelie, Mr Thomas Henderſoun, Commiſſar, was ſet, becaus he was within greis[1]-defendant with the Hous of Baſs; and Mr Thomas Nicolſoun, as penſioner to my Lord Ogilvie, quha fortifeit the perſute.

It is allegit be the perſewaris, that the declinatour aucht nawayis to be reſſauit for the reſones proponit of befoir; and ſpeciallie, that this Court is a Supreame Court *in ſuo genere, viz. in criminalibus*, and that the ſaid Mr Alexander Coluile hes alreddie ſittin and voittit in this cauſe, eftir the proponeing of dilatour and peremptour exceptiones thairin, na declinatour exceptioun being proponit aganis him: And quhair it is allegit be Mr Alexander Peibles, that the Lordis of Seſſioun will be declynit, viz. ane brother may nocht judge in ane vther brotheris caus, nor the ſone in the fatheris caus, *et e contra;* that is of verritie, in reſpect of ane ſpeciall Act of Parliament maid thairanent; but in all vther cauſſis, thair is na exceptioun, nather of affinitie nor conſaguinitie, that will declyne ony of the Lordis of Seſſioun. As to the practique allegit concerning *Arkinglas* proces, that aucht nawayis to be reſpectit in this Judgement, becaus the Juſtice Generall was pairtie perſewer, and aſſiſtit the perſute, and ſa nane of his deputis could ſit; bot we ar nocht heir in that caice.

THE JUSTICE, with advyſe of his Aſſeſſouris, continewis Interloquitour vpone the allegeances foirſaidis, and anſueris maid thairto, anent the declinatour proponit aganis him, to Tyſday nixt.—The Aſſyſe wairnit *apud Acta* for thair compeirance the ſaid day, ilk perſone vnder the pane of ffoure hundreth merkis.

DECLINATURE *of two of the Aſſeſſors.*

Mar. 4.—IT is allegit be my lord Aduocat, that *my Lord of Meidhoip* can nocht be Aſſeſſour to the Juſtice in this caus, in reſpect my Lord Marqueis of Huntlie, and my Lord of Meidhopes wyfe, ar within greis-defendant, viz.: My Lord Marqueis is ane; his Lordſchipis mother, the Countes of Huntlie, tua; and hir father, James Duik of Chattellerault, third; on the ane ſyde: And the Biſchope of St Androis, brother to the Duik, ane; the Laird of Blair, his ſone, tua; and my Lord of Meidhopes wyfe, the Laird of Blairis dochter, the third; on the vther ſyde. In reſpect quhairof, he can nocht be Aſſeſſour.

It is lykwayis allegit be my Lord Aduocat aganis *Sir Andro Hammiltoun of Reidhous*, that his lordſchip can nocht be Aſſeſſour to the Juſtice in this cauſe; because my Lord Marques and he ar ferdis of kyn, and ſa within greis-defendant, viz.: my Lord Marqueis is ane; his Lordſchipis mother, the Countes of Huntlie, tua; James, Duik of Chattellerault, hir father, thred; and Beatoun, the Duikis mother, quha was ſiſter to the Laird of Creiche, fourt; on the firſt pairt:—And ſiclyk, the Laird of Creiche-Beatoun, brother to the Duikis mother, ane; the Lady Balcleuch, dochter to the ſaid Laird of Creich, tua; my Lord of Reidhouſe mother, the ſaid Lady Balcleuches dochter, thrid; and my Lord of

[1] Certain degrees of near relationship, called *degrees-defendant.*

Reidhous, him ſelff the fourt. In reſpect of the quhilk rekning, the veritie quhairof is ſufficientlie knawin to my Lord him ſelff, he can nocht be Aſſeſſour in this cauſe.—It is anſuerit be Mr Thomas Nicolſoun, as prelocutour for the pannell, that he can nocht be bund to geve ane anſuer to the tua allegeances foirſaidis, foundit vpone the declinatour of the tua Aſſeſſouris; becaus in the laſt Court haldin on Setterday, the firſt of this inſtant moneth of Marche, thair was ane Declinatour exceptioun proponit be the pannell aganis the Juſtice him ſelff, quhy he could nocht ſit as Judge in this cauſe, viz., that he was within greis-defendant to the Counteſs of Errole; my Lord of Errole, hir huſband, being ane perſewar. To the quhilk declinatour, dyuerſe anſueris, duplyis, and triplyis war proponit, quhilk as yit ar nocht deſcuſſit, bot the Judge continewit Interloquitour vpone the ſaid exceptioun-declinatour to this day: And thairfoir, *ante omnia*, befoir ony alledgeance may be had ather be perſewer or defender, Interloquitour man[1] be firſt pronuncet vpone the ſaid allegeance, conforme to the ordour of the proces; quhilk man be done of neceſſitie; for, gif the Juſtice ffind the declinatour relevant, quhilk will be provin be his awin aith of verritie, than conſequentlie he can nocht ſit as ane Judge; and gif he be removet as Judge incompetent, he can nocht pronunce Interloquitour in the allegeances proponit aganis my Lord of Meidhoip and my Lord of Reidhouſe as Aſſeſſouris, quhidder thay may be Aſſeſſouris or nocht, *qui vbi non eſt Judex, ibi nec Aſſeſſor, nec proceſſus, nec ſententia interloquutoria, litiſconteſtatio, nec ſententia definitiua:* And thairfoir, quhill firſt it be pronuncet vpone the foirſaid declinatour proponit aganis the Judge him ſelff, thair can na allegeance be proponit or diſcuſſit aganis the Aſſeſſouris.

It is anſuerit be my lord Aduocat, as of befoir, that the ſaid Declinatour aganis the Judge, as Juſtice-depute, can nocht be reſſauit, in reſpect of the eſtait of the proces.

The Juſtice continewis the dyet, and Interloquitour vpone the exceptiones-declinatour aboue written, to Fryday nixt, the ſevint of Marche inſtant: And Ordanis Cautioun to be of new fund be the pannell for his entrie that day, to vnderly (the Law) for the ſaid cryme, vnder the pane of ffyve thowſand merkis.

The Aſſyſe wairnit thairto, *apud Acta*, ilk perſone vnder the pane of ffyve hundreth pundis money.

[*Mr James Bannatyne and Mr Alexander Coluile.*]

Compeirit judiciallie Williame Hay, ſeruitour to my lord Erle of Errole, and producet ane Commiſſioun of Juſticiarie, vnder his Maieſteis Caſchet[2] and Court ſignet, ſubſcryuit be my Lord Chanceller, my Lord of Mar theſaurer, and

[1] Must. [2] A silver stamp, bearing an exact *fac-simile* of the King's signature, invented for the purpose of abridging labour to the King, whose subscription is required to so many documents. It is still in use, and is affixed to certain writings not requiring his Majesty's 'sign-manual.'

my lord Marqueis of Hammiltoun; quhairby Mr James Bannatyne of Neutyld is conſtitute his Maieſteis Juſtice be Commiſſioun. As alſo producet thairwith ane Act of Counſall, beirand the ſaid Mr James acceptatioun of the ſaid Commiſſioune of Juſticiarie and office thairof, and geving his ayth in thair lordſchipis preſens, for his faithfull diſcharge of the ſaid office. Of the quhilk Commiſſioun and Act of acceptatioun and creatioune, the tennour followis:

COMMISSION *in favour of Mr James Bannatyne of Newtyld.*

JAMES R.

JAMES, be the grace of God, King of Grit Britane, France, and Ireland, defender of þe faithe. To all and ſindrie our legis and ſubiectis quhome it effeiris, to quhais knawlege thir our letteris ſall cum, greting. FORSAMEKIL AS George Gordoun of Geicht, being callit and convenit beſoir our Juſtice, in our Tolbuthe of Edinburghe, to haif vnderlyne þe law for þe taking, detening, and executioun of vmq^le Frances Hay, and for beiring, weiring, and ſchuiting of bagbutis and piſtolettis, and for þe perſute and invaſioun, hurting, wounding, and mutilatioun of the thre brether of Brunthillis; in maner, and at þe tyme ſpecifeit and contenit in the Criminall Letteris direct þairupoun: And dynerſe dyettis being keipit to this effect; in end, the matter hes reſſauit ane delay and continuatioun, by the age, infirmitie, and ſeiknes of Sir Williame Heart, quho may nocht attend þairupoun; and by ane declinatour proponit aganis Mr Williame Coluile, collegue to þe ſaid Sir Williame, in the office of Juſticiarie, ſua that now the delay and hinder of Juſtice proceidis vpone the want of ane vnſuſpect Judge. QUHAIRFORE, We, with advyſe of the Lordis of our Secreit Counſall, haif maid and conſtitute our louit *Mr James Bannatyne of Newtyld*, oure Juſtice in that pairt, to the effect vnderwritten; Geveand, grantand, and committand to him our full power and commiſſioun, expres bidding, and charge, to vſe and exerce the office of our Juſtice in all and ſindrie thingis concerning the Tryell of þe ſaid George Gordoun of Geicht, vpone the perticuler crymes and pointis of Dittay ſpecifeit and contenit in þe Criminall Letteris raiſet aganis him. And for this effect, to fence, hald, and continew Juſtice Courtis, ane or ma, within the Tolbuth of our burgh of Edinburgh, ſuitis to mak be callit, abſentis to amerchiat, and to creat officeris and memberis of Court neidfull, if neid beis; and in the ſaidis Courtis the ſaid George to call, be Dittay to accuſe, and him to the knawlege of ane Aſſyſe to put; and as he ſall happin to be fund culpable or innocent of þe crymes contenit in the ſaidis Criminall Letteris, or ony of thame, to caus Juſtice be miniſtrat vpone him, conforme to þe lawis of our realme; Aſſyſſis neidfull to this effect, ilk perſoune vnder ſuche panes as ſall be thocht meit, to ſummond, wairne, chuſe, and caus be ſuorne, and generallie all vþer thingis to do, exerce, and vſe, quhilkis for executioun of þis our Commiſſioun, ar requiſite and neceſſar; ſferme and ſtable halding, and for to hald all and quhatſoeuir thingis ſall be lauchfullie done heirin. GEVIN vnder our ſignet, Att Edinburghe, þe fourt day of Marche, and of our regune þe xiiij and fiftie ȝeiris, 1617.

AL. CANCELL^R. AL. MAR. HAMMILTON.

APUD EDINBURGHE, *quarto die menſis Marcij, anno domini milleſimo ſexcenteſimo decimo ſeptimo*, Red, paſt, voittit, and allowit. J. PRYMROIS.

ACT *of Acceptation by Mr James Bannatyne.*

APUD Ed^r, quarto die menſis Marcij, 1617. The quhilk day *Mr James Bannatyne of Newtyld*, being maid and conſtitute our ſouerane lordis Juſtice, for trying of George Gordoun of Geicht, vpone the crymes ſpecifeit and contenit in the Criminall Letteris raiſit aganis him, at the inſtance of the mother, broþer, and freindis of vmq^le Frances Hay, and at the inſtance of the brether of Brunthill, and of our ſouerane lordis Aduocat, for his hienes intreis; as in the Commiſſioun maid to the ſaid Mr James þairvpoun, of the dait of thir preſentis, at lenth is contenit. The ſaid Mr James compeirit perſonallie, beſoir the Lordis of Secreit Counſell, Acceptit the ſaid Commiſſioun vpone him, and gave his aithe

that he ſall diſcharge the ſaid Commiſſioun vprichtlie and faithfullie, accoirding to his knawlege; as he will anſuer to God and the Kingis Maieſtie þairupoun.

Extractum de libris Actorum Secreti Conſilij ſ. d. n. Regis, per me Jacobum Prymrois Clericum ejuſdem, ſub meis ſigno et ſubſcriptione manualibus. Jacobus Prymrois.

[*Mr James Bannatyne and Mr Alexander Coluile.*]

Mar. 7.—The Juſtice continewis this matter to the morne, the aucht of this inſtant. The Aſſyſe wairnit thairto, *apud Acta*, &c.

The Laird of Geicht proteſtis, that the productioun of the ſaid Commiſſioun of Juſticiarie, and fenceing of this dayis Court, ſould nawayis preiudge him of his declinatour the nixt dyet, nor ony vther declinatour proponit be him of befoir in this cauſe.—My lord Aduocat proteſtis in the contrair.

[*Mr James Bannatyne.*]

Mar. 8.—The perſewaris, nochtwithſtanding of the former declinatour proponit aganis the tua Aſſeſſouris, ar content that thai remane Aſſeſſouris in this caus, conforme to the Counſellis Act maid anent thair conſtitutioun; and paſſis fra the ſaidis declinatouris.

Mar. 11-12.—The 'diſputatiounis' proceeded at great length, on both ſides, on this day, 'Tyſday the xj inſtantis,' and the following day, on the merits of the cauſe. They are very prolix, and unneceſſary to be inſerted in this place.

Mar. 13.—The Juſtice and Aſſeſſouris, ffor obedience of ane Warrand of the Lordis of Secreit Counſall producet be my Lord Juſtice Clerk, continewis this Juſtice Court, and all forder diſputatioun in this cauſe, to the auchtene day of Junij nixtocum; and Ordanis the pannell to find cautioun, &c.

Justice, Juſtice Clerk, and ȝour deputis. Ȝow ſall, vpone the ſight heirof, continew ȝour Court and dyet appointit for Tryell of George Gordoun of Geicht, ffor the taking, detening, and executioun of vmq^le Francis Hay; and for þe beiring and weiring of haquebutis and piſtolettis; and for þe perſute and invaſioun of the breþer of Brunthillis, vntill the auchtene day of Junij nixtocum; takand new cautioun, conforme to þe ordour: Quhairanent thir preſentis ſall be ȝour Warrand. Att Ed^r, the xiij day of Marche, 1617. Al. Cancell^s. Al. Mar. Bynning.

My lord Aduocat declaris that he conſentis to the former continewatioun, only becaus of his Maieſteis Letter, direct to the Lordis of Secreit Counſall, in that matter, and vpone na vther reſpect.—The parties find caution for keeping of his Majeſties peace, &c.

(Jun. 18.)—The Juſtice, be directioun of his Maieſtie, continewis this dyet to the xxvij of Junij inſtant, &c.

(Jun. 27.)—The Juſtice, be directioun of the Kingis Maieſtie, declairit be my lord Aduocat, Continewis all forder diſputatioun in this proces, and tryell of the perticuler crymes *reſpectiue* contenit in the ſummondis, to the thrid day of the nixt Juſtice-air of the ſcherefdome quhair the pairteis, alſweill perſewaris as defenderis, duellis ('Aberdene'), or ſoner vpone xv dayis wairning: And Ordanis

the Laird of Geicht to find Cautioun for his compeirance, to the effect and in maner aboue writtin, vnder the pane of ffyve thowſeand merkis, conforme to his Maieſteis directioun, reportit be his Maieſteis Aduocat, as ſaid is.

The ſaid Laird ffand Williame Gordoun of Rothemay, ffear of Cairneburrow, ſouertie for his entrie, &c.

[*Mr Alexander Coluile, Juſtice-Depute.*]

Adultery—Bigamy.

Mar. 14.—ALEXANDER THOMESONE, ſkynner, burges of Edinburghe, brother to Johnne Thomeſone, Leyth; Johnne Guthrie, *alias* callit Williame Laird, and Jonet Cuthbert.

Dilaittit of the crymes of Adulterie, committit be thame, in maner, and at the tymes ſpecifeit in thair Dittayis.

The pannell acknawleges the crymes contenit in thair ſeuerall Dittayis, and craves God and the Kingis Maieſteis pardoun; and offeris thame in his Maieſteis will thairfoir.

VERDICT. The Aſſyſe, be the mouthe of George Carnebie, indueller in Ed^{r}, all in ane voice, ffand the ſaidis perſones to be ffylet, culpable, and convict.—SENTENCE. In reſpect of the quhilk convictioune, THE JUSTICE, conforme to ane Warrand of the Kingis Maieſtie, quhairof the tennour followis:

To our JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatſoeuir, quhome thaſe preſentis may concerne; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrand and command frome ws, our Aduocat is criminallie to accuſe and perſew beſoir yow one Alex^{r} Thomeſoun and one Jonet Cuthbert, tuo famous and notorious Adulteraris: Althogh thair cryme and offence thairin be capitall, and moſt, by our Lawis, infer payne of death againſt thame, ȝit, out of our princelie grace and mercie, We ar pleſed to mitigat the ſeveritie or extremitie of Law in thair behalf. Requyreing yow, by theſe preſentis, in caice of þair convictioun, to ordane the ſaid *Alexander* to be Baniſched our dominiones, and his eſcheit to be furthwith vptakin for our vſe be our theſaurer: AND that þe ſaid *Jonet* be Baniſched our burgh of Ed^{r}, and the pairtis of þe cuntrie þairabout. In which behalf, and for performeing of þe whole premiſſes, theſe ſalbe to yow ane Warrant ſufficient. GEVIN at Whytehall, the 26th of Januare, 1617.

Ordanit and Adjudget the ſaid *Alexander* to be baniſched his Maieſteis haill dominionis, and nocht to returne within the ſamyn at na tyme heireftir, without his Maieſteis Licence, vnder the pane of deid; as alſo, that his haill moveable guidis be eſcheit, &c. AND ſiclyk, Ordanit the ſaid *Jonet* to be baniſchet furth of the burgh of Ed^{r} and tuelf myles thairaboutis, and nawayis to be fund thairintill, at na tyme heireftir, without his Maieſteis Licence, vnder the ſaid pane of deid. And as concerning the ſaid *Johnne Guthrie*, Ordanit him to be tane bak to the Tolbuth of Ed^{r}, therein to remane in ſure firmance, vnto the tyme Dome be pronuncet againſt him.

Sentence *againſt Johnne Guthrie, alias Williame Laird.*

Compeirit Sir Williame Oliphant of Newtoun, knycht, Aduocat to our ſouerane lord for his hienes intreis, and producet his Maieſteis Warrand, direct to the Juſtice, quhairof the tennour followis:

To our Justice Generall of our Kingdome of Scotland, and his deputis quhatſoeuir, whome theſe preſentis may concerne; and to all and each of thame.

James R. Quhairas, by expres Warrand and command from Ws, our Aduocat is criminallie to accuſe and perſew, befoir yow, on *Johnne Guthrie*, for mariage of tuo wyfes, and keiping (beſydis thame) of a thrid woman for his concubene; whiche being a cryme ſo odious and intollerable amongſt Chriſtianes, and merciting to be moſt exemplarie puneiſched: Thease ar pairfoir expreſlie to will and command yow, in caice of the ſaid Johnes convictioun, to caus pronunce and execute Dome and Sentence of Death aganis him, accoirding to þe ordinance of our Lawis maid for pwneiſchment of ſuche offenderis. In which behalf, and for performeing of þe whole premiſſes, theſe ſall be to yow ane Warrand ſufficient. Gevin at Whytehall, the 26th of Januar, 1617.

The Justice Ordanit the ſaid Johnne Guthrie, *alias* Laird, to be tane to ane gibbet, beſyde the croce of Ed^r^, and thair to be Hangit quhill he be deid; and all his moveable guidis to be eſcheit and inbrocht to his Maieſteis vſe, &c.

[*Archibald Earl of Ergyle, Juſtice General; Mr Alex. Coluile, his depute.*]

Slaughter.

Jul. 16.—Johnne Kirkpatrik, ſeruand to Mr Walter Kynnynmonth of Callinche (Kilduncane.)

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Andro Kynnynmond, ſone to Dauid Kynnynmond of that Ilk; committit vpone the tent day of Junij laſt-bypaſt, viz. The ſaid Johnne being in companie with Mr Walter Kynnynmond, appeirand of Kilduncane, his maiſter, Jedione Kynnynmond, brother to the ſaid Mr Walter, Patrik Kynnynmond, ſone to the ſaid Mr Walter, Hew Dik, ſeruand to the ſaid Mr Walter, Thomas Fentoun, meſſinger citiner[1] in St Androis, Thomas Fentoun, his ſone, thair, Johnne Cleilland, and . . . . Cleilland, ſones to Robert Cleilland of Fermlaw, and . . . Broun, citiner of St Androis, with convocatioun of his Maieſteis leiges, to the number of tuentie perſones, or thairby, all bodin in feir of weir, with ſuordis, daigeris, plait-ſlevis, hagbutis, and piſtolettis, expreſlie prohibeit to be borne, worne, vſet, or ſchote with, be the Actis of Parliament; haiſing conſauet ane deidlie feid, rancour, and malice aganis the ſaid vmq^le^ Andro, vmbeſet[2] his hie way and paſſage, vpone Cires-mure, ane myle or thairby fra the burch of Couper; quhair he, being only accumpaneit with ane ſervand of his awin, war, in ſober and quyet maner, for the tyme, cuming furth of the hie way, lipning for na harme, &c., and thair ſet vpone the ſaid vmq^le^ Andro, ſchot him throw the body with hagbutis, and crewallie hurt and demanit[3]

[1] Citizen; inhabitant; probably inferring that he was not a free *burgess*. [2] Beset; blockaded; 'waylaid.' [3] Abused. Literally, treated; used.

him and his feruand with fuordis, in dyuerfe pairtis of thair bodeyis, to the effufioun of thair bluid in grit quantiteis: Off the quhilkis (woundis) and hurtis gevin to the faid vmq^le^ Andro, he immediatlie deceiffit, &c.

VERDICT. The Affyfe, be pluralitie of voittis, ffand, pronuncet, and declairit the faid Johnne to be ffylet, culpable, and convict of airt and pairt, &c.

The Juftice fuperceidis the pronunceing of Dome, &c.[1]

[*Mr Alexander Colnile, Juftice-Depute.*]

Child-Murder.

Jul. 24.—BESSIE DUNCANE, feruitrix to George Craig in Eifter Dudingftoune.

Dilaitit of the crewall and vnnaturall Murthour and putting to death of ane young infant man-bairne of hir awin, immediatlie eftir the beiring thairof, be putting it vnder the ftra of the bed quhairupone fcho lay; and thaireftir lying thairupoun, and fmoiring[2] the faid infant to deid: committit in ane bak hous of the faid George Craigis, vnder nycht, vpone the fourtene day of Julij inftant; Williame Borthuik, fone to Johnne Borthuik in Wafter Dudingftoun, ane young boy of xviij yeiris of age, being the father thairof.

The faid Beffie, with teiris, in grit penitencie, confeffit the Dittay to be of verritie; and cravet God mercie for the famyn.

VERDICT. The Affyfe, all in ane voce, be the mouth of Johnne Levingftoun, bailzie of Dudingftoun, ffand, pronuncet, and declairit the faid Beffie, in refpect of her awin Judiciall Confeffioun, to be ffylet, culpable, and convict, &c.

SENTENCE. To be tane to ane gibbet at the mercat croce of Ed^r^, and thair to be Hangit quhill fcho be deid; and all hir moveabill guidis and geir, gif fcho ony hes, to be efcheit, &c.

Falset—Forgery—Perjury.

Nov. 17.—MR JOHNNE MUREHEID, Notter in Tueidmouthe.

Dilaitit of airt and pairt of the formeing and wryting of ane fals nyntene-yeir Tak,[3] and counterfuteing of vmq^le^ Johnne Nifbet of Swannisfeild his fubfcriptioun thairto (allegit fetter[4] of the faid Tak) eftir his deceife: And of periureing him felf, in maner fet doun in his Dittay.

The pannell allegit that my lord Juftice can nocht be Judge competent to him, in this matter; becaus he (the pannell) is ane ftranger, quha hes duelt and had his continuall refidence out of this cuntrie within the toun of Tued-mouth, in Ingland, thir dyuerfe yeiris bygane; and thairfoir, conforme to the Act of Par-

[1] No farther entries occur; so that it is probable a Remission was granted. [2] Smothering; suffocating. [3] A Lease for nineteen years. [4] The landlord or proprietor of the ground, who *set* it in Lease.

liament, aucht to be remandit fra this Judicatorie to the Juſtice of Ingland, at the leiſt, to the Biſchope of Dureham, within quhais diocie he duelt, the pannell being ane Eccleſiaſticall perſone, ſervand at the Kirk of Tuedmouth: And laſt, he appaillis to his Maieſteis mercie and clemencie; and offeris him ſelf in his hienes will, for the crymes contenit in the Dittay.

My lord Aduocat, for verificatioun of the Dittay, producet the pannellis Depoſitiones, with the fals Tak, quhilk is fund to be ffals and ffenȝeit befoir the Lordis of Seſſioun, and in reſpect thairof ordainit to be cancellat and diſtroyit: And anſuerand to the allegeances maid be the pannell, ſayis, that nochtwithſtanding thairof, he aucht to be put to ane Aſſyſe, in reſpect the Act of Parliament allegit, is only in fauouris of ſic perſones as duellis in Ingland, and being citet for ſlauchter, thift, burning of houſſis, and vtheris crymes, perticulerlie expreſſit thairin, quhairof the cryme lybellit is nawayis comprehendit, and ar fugitiue thairfoir; and the pannell, cuming willinglie to this cuntrie to beir witneſſing in ane matter betuix tua Scottis perſones, was nawayis fugitiue: And as to the privilege of his profeſſioun, that he is ane Eccleſiaſticall perſone, ſayis that the ſamyn aggrages his offence: And thairfoir, ſould be juſtlie puneiſt for the ffalſet and Periurie confeſſit be him and contenit in his Dittay.

The Justice, nochtwithſtanding of the pannellis allegeances, Remittis him to the tryell of ane Aſſyſe.

Assisa.

Eduard Johnneſtoun, Proveiſt of Annan, James Douglas, bailȝie of Dalkeith,
Johnne Ramſay, mercheand burges of Edr, James Naſmyth of Poſſo.[1]

Verdict. The Aſſiſe, all in ane voce, be the declaratioun of Eduard Johnneſtoun, chanceller, ffand the ſaid Mr Johnne to be ffylet, culpable, and convict of the fforgeing and ſformeing of the ſaid fals Tak; and of counterfuteing of the ſaid vmqle Johnne Niſbetis ſubſcriptioun thairto, eftir he was deid; and Periureing of him ſelff, in maner ſpecifeit in his Dittay.—Sentence. To be tane to the mercat croce of Edr, and thair vpone ane gibbet to be Hangit quhill he be deid; and all his moveabill guidis to be eſcheit, &c.

Usurpation of the King's Authority—Hamesucken, &c.

Jan. 9, 1618.—Thomas Meldrum of Idene,[2] Walter Grant, his ſervand, James Grant in Tulliebo, his brother, and Johnne Roiſs, alſo his ſeruand.

Dilaitit of Vſurpatioun of our ſouerane lordis authoritie, in cuming, vnder ſilence and clud of nycht, to Johnne Meldrum of Ordley his duelling hous of

[1] The remainder are 'mercheandis in Edr.' George Drummond of Cattifelbok (*Cat's-elbow*), Mr Johnne Rutherfurd, Proveiſt of Jedburgh, and six others, were each 'vnlawit in þe pane of ane hundreth merkis,' for not passing on the said Assise.

[2] See Nov. 20, 1618, &c.

. . : . ., and thair, be way of Hamefucken, clymming the walls thairof, tirring[1] he ruif of the chalmer quhair he lay bedfaft, nocht weill convaleffit of ane fever quhairwith he was afflictit and viffeit, be the fpace of tuentie foure oulkis ofbefoir: And for taking of him furth thairof, and cayreing him as ane captiue and priffoner to the place of Idene, quhair he was detenit in privat and ftrait priffone, be the fpace of foure dayis and foure nychtis; vrgeing him, all that tyme, to difcharge certane actiones quhilk he had depending aganis the faid Thomas: And for the haill remanent crymes contenit in the Letteris: Committit vpone the aucht of Maij, 1612 yeiris.

PERSEWAR, Johnne Meldrum of Ordley, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, Mr James Lawtie.

THE JUSTICE, for obedience of the Warrand of the Counfell, direct to him, fubfcryuit be my Lord Chanceller, continewis this dyet to the xvj inftantis: And Ordanis the pannell to find cautioun for thair compeirance that day, vnder the panis contenit in the Actis of Parliament.—Patrik Meldrum, ffiear of Idene, become fouertie for the faid Thomas, his father, &c.

(Jan. 16.)—Continued, by Warrand of the Secreit Counfell, to the xxj inftant.

(Jan. 21.)—The Juftice, of confent of pairtie, continewis this matter to the thrid day of the nixt Juftice-air of Aberdene, or foner, vpone xv dayis wairning. George Seatoun of Schettin and the faid Patrik Meldrum become pleges and fouerteis, coniunctlie and feuerallie, &c.

[*Mr Alexander Coluile, Provoft of Kilmondy, Juftice-Depute.*]

Slaughter—Convocation of the Liegis, &c.

Jan. 14.—WILLIAME JOHNNSTOUN, callit *of Lokerbie;* Archebald J., his brother; Mungo and Hercules J., fones to the faid Williame; Williame J., fone to vmq^le George J., in Lokarbie; Williame J., in Grenefyde; Thomas Harknes, in Lokarbie; Johnne Chalmer, thair; Andro Chalmer, thair; Johnne Johnneftoun, fone to Dauid J., in Cleuchheid; Williame J., in Auldwallis; Patrik J. of Mylnebank, his brother; Johnne J., in Turmour, callit *of Lokarbie;* Andro J., his fone; Archy Halyday, in Turmour; Andro Chalmer, thair; Johnne Bell, in Lokarbie; Francis Bell, thair; James Kennydie, in Bektoun; Andro Chalmer, in Dames.

Dilaitit of airt and pairt of the Slauchter of vmq^le James Johnneftoun, in Kirktoune; committit with convocatioun of our fouerane lordis leigis, vpone the

[1] Forcing a passage, by breaking through the roof. Fr. *tirer;* and A. S. *tyr-an,* to tear.

xxv day of April, 1617, be geving to him of dyuerſe crewall and deidlie woundis in the heid, left airme, left hand, and left pape:[1] Off the quhilkis he nevir convaleſſit, ſpeciallie of the woundis reſſauit in his heid, threſcoir and nyne banes being tane furth thairof; and at laſt, vpone the firſt day of December laſt, he deceiſſit, being vnder cure of the ſaidis woundis ſevin monethis and ten dayis ofbefoir.

Persewaris, Agnes Johnneſtoun, the relict, Sir Williame Oliphant of Newtoun, kny^t.

Prelocutouris in defence.

Mr Thomas Nicolſone, Mr Alexander Peiblis, Mr James Oliphant, Adame Cuninghame.

The Juſtice, of conſent of pairtie, continewis this dyet to the xxv of Februar nixt, and Ordanis the pannell to find cautioun for thair entrie that day, vnder the panes contenit in the Actis of Parliament: Quha for obedience of the ſaid ordinance, ffand James Johnnſtoun of Waſtraw, and Archibald Douglas of Kelheid, brother to my lord of Torthorrell, bayth perſonallie preſent, cautioneris and ſouerteis, conjunctlie and ſeuerallie, for thair re-entrie, &c.

(Feb. 25.)—Compeirit Mr James Oliphant, and producet ane Warrand of the Lordis of Secreit Counſell, procuret be the (ſaidis) perſones (on pannel), daitit the xix day of Februare inſtant, be the quhilk the Juſtice is ordanit to continew this dyet to the xxvij day of Marche nixtocum, &c. Which deſire was granted; Robert Johnnſtoun of Raecleuch becoming cautioner for the pannels' entry.

Persewar, Andro Johnneſtoun, as ſone.

Prelocutour in perſute, Sir Robert Gordoun of Lochinvar, kny^t.[2]

(Mar. 27.)—It is declairit be the pannell, befoir thai cum to thair allegeance, be way of informatioun to the Juſtice, that it wald pleis his Lordſchip vnderſtand, that the matter fell furth eftir this maner. My Lord of St Androis that now is, being Archebiſchope of Gleſgow for the tyme, haifing ane cair to haif the haill Kirkis within his dyocie[3] ſufficientlie plantit; and eftir vizitatioun, cuming to the Kirk of Dryſdaill, quhair it was fund be him that the watter of Dryfe ran ſa violentlie, eftir ane ſpeat,[4] throw the haill kirk yaird and landis adjacent thairto, that the Kirk it ſelff was liklie to becum ruinous and decay, except the courſe of the ſaid watter had bene divertit and drawin ane vther way thairfra: For remeid quhairof it was aggreit, with conſent of the haill gentilmen of the parochin, that the ſaid watter ſould be divertit ane vther way; and accoirding thairto, it was appointit, that vpone the ſaid xxv day of Apryle, the ſaid Williame Johnnſtoun, with affiſtance of the parochin, ſould cum, with ſpaidis and ſchuiles, to mak ane watter-gang: In the doing quhairof, the ſaid vmq^le James Johnnſtoun, with his ſones, come bodin in feir of weir, and maid interruptioun to the perſones foirſaidis that war caſting the ſaid watter-gang, and invaidit and perſewit dyuerſe of the perſones that war working, for thair ſlauchter; be occaſioun of the quhilk

[1] Breast. [2] These in addition to the persons abovenamed. [3] Diocese. Flood

perſute and invaſioun ane ſtraik was gevin to the ſaid vmq^le James vpone the heid with ane ſpaid or ſchule, be quhat perſone the pannell knawis nocht: Eftir the quhilk ſtraik he convaleſſit, and was at tua ſeuerall Juſtice-Courtis in Jedburgh; was alſo at the Parliament in Ed^r; raid in dyuerſe pairtis of the cuntrie, and within Ingland; and thaireftir, fell ſeik of ane fever, quhairof he deceiſſit; as is nottour to the haill cuntrie.

Quhilk being premittit,[1] it is allegit peremptourlie for the pannell, that thay can nocht be put to ane Aſſyſe for the cryme lybellit, in reſpect the ſaid vmq^le James Johnnſtoun, for quhais ſlauchter thai ar perſewit, was ſlane at the horne, and deceiſſit vnrelaxit thairfra, ffor ane criminall cauſe, viz. ffor airt and pairt of the Slauchter of vmq^le Hew Dowglas of Dalvene. *Igitur*, &c.—To the quhilk it is anſuerit be the perſewaris, that the allegeance aucht to be repellit, becauſe the ſaid vmq^le James was relaxt fra the ſaid Hoirning: And producet the Relaxatioun for verificatioun thairof.[2]—It is duplyit be the pannell, that the Relaxatioune producet meittis nocht the Hoirning; becaus the ſaid vmq^le James Johnnſtoun is relaxt fra the horne lang eftir the tyme lybellit of the ſtraikis gevin to him quhairof he deceiſſit, to wit, lang eftir the xxv day of Apryle, 1617, he nocht being relaxit quhill the xxviij of October thairefter.—To the quhilk it is anſuerit be the perſewaris, and allegit,[3] that the Hoirning quhairupoun the ſaid allegeance is foundit is null, becaus the ſaid vmq^le James Johnnſtoun being deſignet be the ſaid Letter of Hoirning to haif ane certane duelling-place, viz. in Twnnergarthe, the tyme of the raiſing thairof, he is nather charget perſonallie nor at his duelling-place, quhilk aucht to haif bene done; he being ane Scottis ſubiect, duelland within Twnnergarth, quhair he duelt the tyme of the geving of the charge to him, be oppin proclamatioun; lykas, he duelt thairin dyuerſe yeiris ofbefoir.—It is anſuerit be the pannell aganis the allegeance, foundit be the perſewaris vpone the nullitie of the Hoirning, that the ſaid allegeance aucht to be repellit, in reſpect of the privilege and Diſpenſatioun ſet doun in the Letteris of Hoirning producet, quhilk ſuſtenis the charge gevin to him, be oppin proclamatioun at the croce of Dumfreis, to be als lauchfull as gif he war charget perſonallie or at his duelling-place, for the reſſone ſpecifeit in the Letteris.

It is allegit be the perſewaris, as to the Relaxatioune and allegeance maid thairupoun, that the ſaid Relaxatioun is lauchfull and ſufficient in the ſelff; becaus the ſamyn is purcheſt be the ſaid vmq^le James, and he lauchfullie relaxt, be vertew thairof, lang befoir his daithe.—The pannell repeittis thair former anſuer.

[1] Premised. [2] On margin, '1 Aprilis, 1618. This Relaxatioun gevin vp agane to Andro Johnnſtoun, producer thairof.' [3] Pleaded; urged as a plea.

It is fforder allegit be the pannell and thair prelocutouris, that thai can nocht be put to ane Affyſe for the cryme lybellit, becaus the ſaid vmq^le James Johnnſtoun was ſlane and deit at his Maieſteis horne ffor ane criminall cauſe, viz. ffor the ſteilling of tua horſe pertening to James M^cmathe in Knokinhair; committit be him in the moneth of September, 1597; ffor the quhilk, being perſewit criminallie befoir the Juſtice, and charget to vnderly the Law within the tolbuth of Ed^r, vpone the xxj day of Januar, 1607 yeiris, was, for nocht finding of cautioun, denuncet and declairit fugitiue fra his hienes lawis for the ſaid cryme: And ffor verificatioun thairof, producet the Extract of the Hoirning.—To the quhilk it is anſuerit be the perſewaris, that the Summondis and Dittay aucht to pas to ane Affyſe, nochtwithſtanding of the allegeance proponit be the pannell, foundit vpone the tua criminal Hoirningis producet; becaus the ſaid vmq^le James Johnnſtoun of Kirktoun was nocht only relaxt fra the firſt Hoirning befoir his deceis, bot alſo becaus it is ſpeciallie provydit be Act of Parliament, maid in the moneth of October, 1612 yeiris, that all perſones duelland vpone and within the boundis of the lait Bordouris of this kingdome, ſpeciallie within the boundis of the ſcherefdome of Dumfreis and ſtewartrie of Annandaill, quhair the ſaid vmq^le James duelt, ar fred and relevit of all and quhatſumeuir criminell cauſſis that could be laid to thair charges, ffor quhatſumeuir ffyre-raiſingis, ſlauchteris, thiftis, and ſtouthes, or vther criminall cauſſis quhatſumeuir, befoir his Maieſteis going in England, quhilk was in Apryle, 1603 yeiris, &c.

The Justice continewis Interlocutour, vpone the allegeances foirſaidis, to Wedniſday nixt. The Affyſe wairnit *apud Acta*, ilk perſone vnder the pane of ij^c merkis. Williame Douglas, younger of Caſchogill, become ſouertie for the entrie of the haill perſones on pannell, &c.

(Apr. 1.)—The Juſtice, be directioun of the Lordis of Secreit Counſall, Ordanis the perſones on pannell to find cautioun for thair entrie and compeirance of new agane, befoir the Juſtice or his deputis, the thrid day of the nixt Juſtice-air of the ſcherefdome or ſtewartrie quhairin thay duell; or ſoner, quhan or quhair it ſall pleis his Maieſtie, vpone xv dayis wairning, &c. Williame Douglas of Caſchogill plege and ſouertie, &c.

Invading—Hurting and Wounding—Slaughter.

Feb. 13.—Hew Falconer of Innerlochtie; Hew Falconer, his ſone; Frances Hay and Alexander Hay, ſones to Williame Hay of Mayne; Thomas Grant, brother to James Grant in Daltulleis; Lauchlane Grant of Weſter Elcheis; Johnne Grant, his ſone.

Dilaitit of airt and pairt of the invaiding, hurting, and wounding of Thomas Grant of Cardellis, and ſlauchter of vmq^le Patrik Grant, his ſone; committit within the burgh of Elgyn, the xj of November laſt, 1617.

PERSEWARIS, Thomas Grant of Cardellis, as father; Johnne Grant, appeirand of Cardellis, as brother; Sir Williame Oliphant of Newtoun, knycht, for his Maiefteis intreis.

THE JUSTICE, of confent of ather pairteis, and accoirding to ane directioun gevin to his lordfchip be the Lordis of Secreit Counfall, continewis this matter to the thrid day of the nixt Juftice-air of the fcherefdome quhair the defenderis duellis, (Elgyn,) or foner, vpone xv dayis wairning, &c.

Sir Alexander Gordoun of Clwnie, kny^t^, become fouertie for the faid Thomas Grant, vnder the pane of tua thowfeand merkis; Sir Alexander Falconer of Halkertoun, kny^t^, become fouertie for the faid Hew Falconer and his fone; James Hay, appeirand of Mayne, become fouertie for Frances and Alexander Hayis, his tua brether; and Robert Innes of Balvany for Lauchlane and Johnne Grant—all vnder the panes contenit in the Actis of Parliament.

Slaughter.

Mar. 18.—WILLIAME JOHNNSTOUN, callit of Lockerbie, and Johnne Carutheris of Rammerfcaillis.

Dilaittit of airt and pairt of the Slauchter of vmq^le^ Criftopher Wigholme,[1] burges of Sanquhar; committit in Junij, 1594.

PERSEWAR, Niniane Wigholme, as fone; Sir Williame Oliphant, knycht.

PRELOCUTOURIS in defence, Mr James Oliphant, Adame Cuninghame, Aduocattis.

The perfewar paffis fra the perfute of the faid Johnne Carrutheris *pro loco et tempore*.—It is allegit for Williame Johnnftoun, that he can nocht be put to the knawlege of ane Affyfe for the crymes lybellit, in refpect his Maieftie and Eftaittis, be Act of Parliament, maid in October 1612, hes, for the reffone mentionet thairintill, geving ane generall pardoun to all maner of perfones duelland within the boundis of the lait Bordouris of this Kingdome, for all maner of crymes committit be thame preceding his Maiefteis going in Ingland, &c.—To the quhilk it is anfuerit, that the allegeance aucht to be repellit, in refpect of the fummondis beiring the fact lybellit to be perfewit be the pairtie, with concurfe of his Maiefteis Aduocat; quha is fpeciallie exceptit in the faid Act, and hes power, be vertew thairof, to perfew.

THE Juftice continewis Interloquitour to Fryday nixt; and Ordanit the pannell to find cautioun for his compeirance, as alfo for the entrie of his brother, the faid day.—Robert Somerwell of Smailhomes become fouertie, &c.

(Mar. 20.)—THE JUSTICE ordanit cautioun to be ffund, that the faid Williame and Frances fall compeir befoir the Juftice or his deputis, the thrid day of the Juftice-air of the fcherefdome or ftewartrie quhairin thay duell, or foner, vpone xv dayis wairning.—Robert Somerwell of Smailholme, and Williame Johnnftoun of Currielaw, become pleges and fouerteis, &c.

[1] This name is now written *Wigham*, and *Whigam*.

Slaughter.

Mar. 18.—Robert Symmer, ſone to the Laird of Balzordie.

Dilaittit of the crewall Slauchter of vmq^le Dauid Graham, ſone to vmq^le James Grahame of Leuchland; committit vpone the xxix day of Apryle, 1616 yeiris, vpone the Hauche of Inſche, neir to the Mekill-mylne of Brechin, be ſtreking him throw the body with ane rapper-ſuord; quhairof, within ſex or ſevin dayis thaireftir, he deceiſſit.

Persewer, James Grahame, as brother to the defunct; James Keith of Harvieſtoun, brother-in-law; Sir Robert Grahame of Morphie, neir kinſman; Sir Williame Oliphant of Newtoun, kny^t.

Prelocutour in defence, Mr George Symmer.

The pannell, being accuſet be Dittay, of the ſlauchter of the ſaid vmq^le Dauid Grahame, denyis the ſamyn, with the haill circumſtances ſet doun in the Dittay, concerning the ſaid ſlauchter.

Assisa.

Dauid Lyndſay, in Brechin,
James Ramſay, thair,
Johnne Vdny of Kethik,
James Smyth, in Brechin,
Andro Thomeſoun, thair,
Johnne Anderſoun, burges of Montrois,
Dauid Gairdin of Lawtoun,
Patrik Guthrie of Kinblakmouth,
James Halyburtoun, mercheand burges of Edinburghe,
Johnne Peter, wryter, burges thair,
Laurence Heiring, brother to Lethindie,
Johnne Cob, citiner of Brechin,
Williame Carnagy, ſkynner, burges of Edinburghe,
Williame Ruthvene of Bandane,
Williame Elder, tailzeour, burges of Edinburghe.

Verdict. The Aſſyſe haiſing reſſonit and voittit vpone the pointis of the ſaid Dittay, and being ryplie and at lenth advyſet thairwith, togidder with the Letteris of Hoirning producet be his Maieſteis Aduocat, beiring the ſaid Robert to haif bene denuncet rebell in Maij, 1616, for nocht finding of cautioun to haif compeirit befoir the Juſtice to haif vnderlyne the Law for the ſaid ſlauchter; ffor the quhilk fact, he hes bene fugitiue and furth of the cuntrie ſenſyne; togidder with ane Commiſſioun, and vther probatioun producet alſo be his hienes Aduocat, for inſtructing the ſaid Dittay—thay all in ane voce, be the mouth of the ſaid Johnne Vdny, chanceller, fand the ſaid Robert to be Fylet, culpable, and convict of the ſaid Slauchter.

Sentence. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be ſtrukin frome his body; and all his moveabill guidis to be eſcheit, &c.

Intercommuning with the Clan-Gregor.

Mar. 18.—Colene Bruce, ſumtyme duelland in the Middilhauch of Huntingtour.

Being brocht furth of the Tolbuth or Waird-hous of Edinburgh, quhairin he hes bene wairdit thir dyuerſe monethis bygane, and preſentit vpone pannell, be directioun of the Lordis of Secreit Counſall, to heir and ſie the dome vnderwrittin pronuncet aganis him, as he that became in his Maieſteis will ofbefoir,

ſſor the aſſiſting, reſſett, ſupplie, and intercowmoning with THE CLANGREGOUR; and accoirding to his Maieſteis will than publeiſt and declairit, vpone the ſaxt day of Auguſt, 1605, was ordanit to be Baniſchet his Maieſteis haill dominiones, nevir to be ffund agane within the ſamyn, vnder the pane of deid, for the ſaid cryme.—(See this Collection, II. p. 457.)

SENTENCE. The Juſtice of new agane, conforme to ane Warrand and delyuerance of the Lordis of Secreit Counſall, ſubſcryuit be my Lord Chanceller, and be my Lord of Mar, Grit-Theſaurer, daitit the xvij day of Marche inſtant, Ordanit the ſaid Colene Bruce to be Baniſchet, as ofbefoir, his hienes haill dominiones, and nevir to be fund within the ſamyn, vnder the pane of deid, but forder fauour: Lyk as, to be returnet bak agane to the ſaid waird be the Magiſtratis of Edinburgh, to be keipit be thame thairin, in ſure firmance and captiuitie, vnto the tyme a Schip be prepairit, quhairin he may be tranſpoirtit.

Slaughter at a Funeral.

Jun. 10.—JOHNNE JOHNNESTOUN of Tunnergarthe; Blench Bell, his ſpous ('*paſt fra*'); Johnne, *alias Jok*, Williame, ffrances, and James, four ſones to the ſaid Johnne; James Johneſtoune; Andro Johneſtoune, in Kirktoun; Williame, ffrancie, and George, his thre brether; Dauid Bell, callit of Craighous; Williame Johneſtoune, in Hilbank; Johnne, his brother; Williame and Johnne Johnneſtoune, in Schaw; Williame J. in Hilbank; Johnne, his brother; James Johnneſtoun, in Hill ('*paſt fra*'); Patoun Bell, in Yle ('*paſt fra*'); Jok Burges, in Kirkhouſſes ('*paſt fra*'); Jok Johnneſtoune, in Fouleraw ('*paſt fra*'); James Johnneſtoune, ſone to Twnergarthe; ffrances J. in Myreheid; James J. in Court; James Bell, in Twnnergarthe ('*paſt fra*'); Johnne Bell, in Holmheid ('*paſt fra*'); George Johnneſtoune, ſone to Johnne Johnneſtoune of Twnergarthe.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Frances Johnneſtoune, brother-germane to Williame Johnneſtoune of Lockerbie; committit vpone the xxj day of Apryle laſt, at the Buriall of Thomas Johnneſtoun, ȝounger of Fingland, beſyde the Kirk of Twnergarthe, and ȝaird thairof.

PERSEWARIS, Williame Johnneſtoune of Locherbie, brother; Sir Williame Oliphant, kny^t^.

James Johnneſtoun of Waſtraw became ſouertie for the entrie of James of the Hill, the thrid day of the nixt Juſtice-air of the ſcherefdome quhair he duellis; or ſoner, vpone xv dayis wairning.—Johnne J. of Twnergarth, ſouertie for the entrie of Patoun Bell, Jok Burges, Jok J. of Fouleraw, and James Bell of Twnergarthe.—And Johnne Carmichell in the Maynes, ſouertie for the entrie of Johnne Bell in Holmeheid.

THE JUSTICE, of conſent of the perſewaris, continewis this dyet aganis the remanent perſonis nocht paſt fra, to the ſevint day of Auguſt nixt; and Ordanis thame to ffind ſouertie for thair entrie that day.

James Gordoun of Buithill, brother to Lochinvar, ſouertie for the entrie of

Johnne of Twnergarthe and his ſones—Johnne of T. ſouertie for Frances of Myreheid, &c.—Johnne Gordoun of Hiſſilfeild, for Andro J. in Kirktoun, &c.

(Aug. 7.)—The Juſtice, of conſent of pairtie, continewis this dyet to the xviij of November nixt.—Niniane Johnneſtoun of Powdene, cautioner for Twnergarthe and Andro J. of Kirktoun—and thay, conjunctlie and ſeverallie, for the entrie of the remanent perſones.

(Nov. 18.)—Continued to the thrid day of the nixt Juſtice-air of Dumfreis, or ſoner, vpone xv dayis wairning.

Slaughter at a Funeral.

Jun. 10.—James Johnnstoun of Waſtraw; William J. of Locherbie; Archibald, his brother; Nicolas Cairleill, ſpous to the ſaid Williame ('*paſt fra*'), and others.[1]

Dilaitit of airt and pairt of the Slauchter of vmq^le Andro Johnnſtoun, ſone to Johnne Johnnſtoun of Twnergarthe; and Slauchter of vmq^le Johnne J., brother-germane to Andro J. of Kirktoun; committit the xxj day of Apryle laſt, within the Kirk-ȝaird of Tounergarthe, at the Buriall of Thomas Johnnſtoun, ȝounger of Fingland.

Perſewaris.

Sir Williame Oliphant of Newtoune, kny^t, Aduocat to our ſouerane lord; Johnne Johnnſtoun of Twnnergarthe, as father to the ſaid vmq^le Andro; Johnnſtoun of Kirktoun, as brother to the ſaid vmq^le Johnne.

The ſame procedure takes place in this caſe as in the preceding; and is finally, on Nov. 18, continued to the Juſtice-air of Dumfries, &c.

Rape—Forcing and shamefully Abusing, &c.

Jun. 17.—Mr Dauid Wedderburne, indueller in Dundie, and Andro Cryſtie, indueller in Leith.

[1] The other pannels follow:—Mungo Johnnſtoun, ſone to the ſaid Williame; Williame J., brother-ſone to the ſaid Williame of Locherbie; Andro Chalmer, in L. ('*paſt fra*'); Johnne C. and Andro C., his tua ſones, thair ('*paſt fra*'); Williame Brydane, in Gymmenbie ('*paſt fra*'); Mathow Brydane, thair ('*paſt fra*'); Heckie Johnnſtoun, thair ('*paſt fra*'); Andro Grahame, in Locherbie; Williame Grahame, in Weſtwoid ('*paſt fra*'); Hercules Johnnſtoune, in Locherbie; Margaret J., wedow, in Nitholme ('*paſt fra*'); Williame Kennedie, ȝounger of Hallaithes; Johnne K. of Hallaithes ('*paſt fra*'); Johnne Chalmer, in Studrigis ('*paſt fra*'); Thomas Harknes, oiſtler in Locherbie; Johnne Johnnſtoun of Turmour, callit of Locherbie; Dorathie J., his ſpous ('*paſt fra*'); Andro J., his eldeſt ſone; Andro J., brother to the ſaid Johnne of Twrmour; Williame J., alſo his brother; Johnne Bell, his ſervand ('*paſt fra*'); Thomas J. of Fingland; Johnne J. in Burſs, callit of Fingland; Johnne J., callit *Gawinis Johnne;* Gib Mundell, in Lairdholme ('*paſt fra*'); Adie Blaiklok, thair, callit of Birſkay ('*paſt fra*'); Hercules J., callit *the Baſtard,* in Locherbie; Johnne J., ſone to Williame J. of Auldwallis ('*paſt fra*'); George J. in Mylnebank; Johnne J., ſone to Dauid J. of Cleuch-heidis; Mungo Kennydie in Aſtork; Andro Irwing, alias Myller, in Wylieboill ('*paſt fra*'); Mathow Thorbrand, thair ('*paſt fra*'); Williame T., thair ('*paſt fra*'); James Grahame, in Quhyteſtanehill ('*paſt fra*'); Thomas Manekſtoun, in Midge-bray ('*paſt fra*'); Dauid M., thair ('*paſt fra*'); Symone Hall, thair ('*paſt fra*'); Johnne Corrie, in Preiſtbuttis; Gawin Smyth, thair; Thomas Johnnſtoun, callit *Geordeis Thome,* thair; Johnne Kennydie of Hallaithes ('*paſt fra.*')

Dilaitit of the Foirceing and ſchamefull abuſeing of Jonet Crambie, dochter to vmq^le George Crambie, burges of Bruntieland, and Jonet Broune, hir mother; committit within the dwelling-houſe of Alexander Anderſone in Bruntieland, vpone the xxvj day of Marche laſt.

PERSEWARIS.

Jonet Brown, as mother to the ſaid Jonet Crambie; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOURIS in defence, Mr Thomas Nicolſoun, Mr Vmphra Blindſchell, Mr Johnne Ruſſell.

It is allegit be the pannell and thair prelocutouris, that na proces can b grantit in this matter, nather can thai (be) put to the knawlege of ane Aſſyſe for the cryme lybellit; becaus the ſaid Jonet Crambie, ſpeciall pairtie perſewar, to quhome the allegit cryme is done, is nocht preſent to perſew thame for the ſamyn.—It is anſuerit be my lord Aduocat, that the allegeance aught to b repellit, in reſpect that the mother is preſent, and is reddie to perſew, quha is ſufficient; or ony of the kyn and freindis to perſew, with concurrence of his Maieſteis Aduocat.—It is replyit be the pannell, that the mother is only for her (awin) intereis; quha can nocht perſew thame for the allegit cryme, t pairtie allegit offendit being on lyfe.—It is anſuerit, that the allegeance aucht to be repellit, in reſpect of the former anſwer.

The pannell deſyres the mother to be ſolemnelie ſuorne, vpone the verritie of the Dittay, befoir thai cum to thair defenſe.—The mother refuiſes to geve her aith vpone the Dittay, as it is qualifeit, in reſpect ſcho was nocht preſent; bot declairis that hir dochter paſt ſaif and haill furth of hir hous; and come bak agane to hir hous ſchamefullie abuſet, &c.; quha than repoirtit to hir that ſcho was forcet be the pannell, in maner ſpecifeit in the Dittay.—The pannell takis inſtrumentis, that the mother refuiſſing to ſweir; and proteſtis for remeid of law, for thair ſchamefull ſclander.

THE JUSTICE Ordanis the pannell to ffind cautioun for thair compeirance the thrid day of the nixt Juſtice-air of the ſcherefdome quhairin thai duell,[1] or ſoner, vpone xv dayis wairning, to vnderly the law for the ſamyn, vnder the pane of I^m merkis for ilk ane of thame.—Mr Johnne Elphinſtoun, indueller in Leith, become ſouertie for the ſaid Andro, vnder the pane of I^m merkis. Andro Watſone, bailzie and burges of Bruntieland, become ſouertie for the ſaid Mr Dauid, vnder the ſaid pane.

Slaughter.

Jun. 20.—JAMES STEWART, ſone to vmq^le Johnne Stewart of Kilpatrik.

Dilaitit of the cryme following, viz. fforſamekill as, he haiſing conſauet ane deidlie ffeid, rancour, and malice aganis Andro Cuninghame in Belliemichell, in

[1] Forfar and Edinburgh.

Arrane, in the moneth of Maij laſt, come bodin in feir of weir,[1] with ane ſuord and vther wappones, *inuaſiue*, to the ſaidis Landis of Belliemichell, of purpois to haif darnet[2] himſelf in the brome,[3] neir to the ſaid Androis hous, thair to haif murthouret him: In his cuming to the quhilk brome, being eſpyit be ane . . . . Jerveiſe, ſervand to the ſaid Andro, quha was addreſſing him ſelf in to the ſaid Androis hous, to geve him adverteiſment of the ſaid James being thair; the ſaid James followit the ſaid . . . . . Jerveiſe, and befoir he could cum to his maiſteris hous, ouertuik him, and with ane ſuord ſtrak him in the bellie, and ſlew him thairwith.

The pannell confeſſes the Slauchter of . . . . . Jerveis; and offeris to ſatisfie the pairtie and the Kingis Maieſtie for the ſamyn, ſeing nane perſewis him bot his Maieſteis Aduocat, for his hienes intreis.—The Aduocat takis inſtrumentis of the pannellis confeſſioun of the cryme.

Verdict. The Aſſyſe, be the mouth of Mr Donald Campbell, chanceller, all in ane voce, in reſpect of the ſaid James Judiciall Confeſſioun, ffand and declairit the ſaid James to be ffylet, culpable, and convict of the Slauchter of the ſaid vmq^le^ . . . . Jerveis.—Sentence. To be tane to the Caſtle-hill of Edinburghe, and thair his heid to be ſtrukin frome his body; and his haill guidis and geir to be eſcheit, &c.

Theft.

Jul. 2.—Gilbert Ellote, callit *Gib the Galzart.*[4]

Dilaitit of the thiftious ſteilling of ane purſe fra Johnne Airmeſtrang, callit of the Holme, vnder ſilence and clud of nycht, within the duelling hous of Alexander Young in Selkirk, in the moneth of Maij laſt, be taking the ſaid purſe, with ffourtie pundis being thairin, furth of the ſaid Johnne Airmeſtrangis breikis, in maiſt thiftious maner; and drinking of ten merkis of the money that was thairin; and abſtracting the reſt of the ffourtie pund, vnto the tyme the ſamyn was challanget vpone him, and reſtoirit bak agane thaireftir to the ſaid Johnne Airmeſtrang, awner thairof.

The pannell declairit that he nawayis ſtaw[5] the purſe, in maner ſpecifeit in the Dittay; bot allanerlie, that he being in Alexander Youngeis hous, in Selkirk, ryſeing in the moirning, ffand the purſe vpone the fflure of the chalmer; quhilk he retenit, and ſpendit of the money that was thairin ten merkis allanerlie,[6] in recompance to the ſaiffer;[7] and reſtoirit the ſaid purſe, with the reſt of the money

[1] Furnished in warlike manner. [2] Concealed; hidden. [3] Broom; *planta genista.*
[4] 'Williame Johnstone of Wamphray, called *the Galliard*, was a noted freebooter. His *nom de guerre* seems to have been derived from the dance called *the Galliard.* The word is still used in Scotland to express an active, gay, dissipated character.'—*Border Minstrelsy*, i. 230. It is right, however, to inform the reader, that this *sobriquet* was very prevalent on the Border. [5] Stole.
[6] Only. [7] Salvage money, and for restoring what was lost.

being thairin, to the ſaid Johnne Airmſtrang, ſa ſone as he vnderſtuid the ſamyn pertenit to him; affirmeing, that the ſaid Johnne Airmeſtrang wald nawayis inſiſt aganis him for Thift.—The Aduocat anſueris, that his Declaratioun maid can nocht be reſpectit; bot he ſould be put to ane Aſſyſe, in reſpect of his depoſitioun maid be him, in preſens of the Juſtice, confeſſing the ſteilling of the purſe and money thairintill, in maner ſpecifeit in the Dittay.

The Juſtice Ordanis him to pas to ane Aſſyſe, nochtwithſtanding of his former allegeance and Declaratioun maid be him thairintill.

VERDICT. The Aſſyſe, be the mouth of Johnne Scott of Sundeliſhoip, chanceller,[1] for the maiſt pairt, ffand, pronuncet, and declairit the ſaid Gilbert to be ffylet, culpable, and convict of the away-taking furth of Alexander Youngis hous in Selkirk, of the ſaid Johnne Airmeſtrang his purſe, with ffourtie pundis being thairintill; quhilk purſe was delyuerit bak agane to the ſaid Johnne, and haill ſowme aboue ſpecifeit, except ten merkis thairof allanerlie: And Clanges him of the ſteilling of the ſamyn.—SENTENCE. To be SCURGET throw the burgh of Edinburgh; and alſo to be actit to be Baniſchet furth of this realme, and neuer to be ffund agane within the ſamyn, without his Maieſteis Licence, vnder the pane of deid, but fauour.

The ſaid Gilbert actit himſelf to depairt furth of this realme, within xx dayis eftir the dait heirof; and nevir to be ffund agane within the ſamyn, without his hienes Licence, vnder the pane of deid.

Murder.

Jul. 8.—JOHNNE MENZEIS and Andro Menzeis, brether to Williame Menzeis of Caſtelhill; Raulff Dalzell at the mylne of Duriſdeir, James Barbour in Colymme, Hectour M^c^Quhynzie in Thornehill, Jonet M^c^Rone, ſpous to Johnne Williamſoun in Duſdeir, Johnne Williameſone hir ſpous for his intreis, Marioun M^c^Rone, ſiſter to the ſaid Jonet.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of Patrik Douglas, ſone to Hew Douglas of Balliebught; committit the fyftene day of Marche laſt, at the gavill of the ſaid Johnne Williamſones hous, in Duſdeir, in his ganging furth of the toun of Duſdeir to the place of Moirtoun.

PERSEWAR, Hew Douglas of Belliebucht, Sir Williame Oliphant, kny^t^.

PRELOCUTOURIS in defence, Mr Thomas Nicolſoun, Mr Lueis Stewart, James King.

THE Juſtice, with conſent of my Lord Aduocat, continewis this matter to the thrid day of the nixt Juſtice-air of the Scherefdome of Dumfreis, or ſoner vpone fyftene dayis wairning; and ordanis the pannell to find Cautioun for thair re-entrie to that effect.—The Laird of Dalzell, elder, and Williame Menzeis of

[1] The remainder are merchants and burgesses of Edinburgh.

Caſtelhill, become pleges for Johnne and Andro Menzeis—and Robert Douglas of Caſchogill for the entrie of Hectour M'Quhynzie.

Slaughter—Demembration.

[The Case which follows, affords one among numerous other instances, of the unhappy consequences resulting from the deadly feuds, which occurred almost daily; and strongly points out their prevalence in Scotland, to a very lamentable extent. *Sir James Balfour*, in his *Annales*,[1] states, that '*the Young Laird of Cultmalindie-Bruce*, in Perthſhyre, killed *Toſhohe Laird of Minewaird*, ſiſter ſone to *Sir James Campbell of Lawers*, in the toune of Perth. *Cultmalindy*, the committer of the ſlaughter, fled.' But *Fleming*, in his MS. Diary or Chronicle,[2] gives a much more minute detail of this affair, in the following passage, extracted from the Original MS. :—' Vpoun Midſomer-day, the xx of Junij, 1618 yeiris, at twa efternoon, (*Dauid*) *Toſchcoch of Monivaird younger* ſlaine in the South-gait of Perth be *Lourence Bruce younger of Cultmalindeis*, his brother, and diuers thair aſſociates. The twa that was with *Monyvaird*, the ane deidlie hurt, bot deit not; the vther, his richt hand clene ſtrukin fra him. This done in a moment of time. All the committeris thairof eſchewit out of the towne, befoir any of the townis-men hard of ony ſuche thing.']

Jul. 29.—Peter Blair, brother-germane to Andro Blair of Gairdrum.

Dilaitit of airt and pairt of the ffelloun and crewall Slauchter of vmq^le Dauid Toſcheoche, zounger of Monyvaird; and Demembring of Dauid Malloche, his ſeruand, of his richt hand; committit within the burgh of Perth, vpone the xxiiij day of Junij laſt.[3]

The ſaid Andro (as cautioner for his brother) nocht compeirand nor enterand the ſaid Peter, the Juſtice ordanit him to be in ane amerceament and vnlaw, viz. tua hundreth merkis: Lyk as, the ſaid Peter was decernit, for his nocht compeirance, to be denuncet rebell and put to the horne, and all his moveabill guidis to be eſcheit, &c.

Slaughter—Demembration.

Jul. 29.—Lawrence Bruce, appeirand of Cultmalundie; Alexander Bruce, his brother; Williame Oliphant of Gaſk; Laurence Oliphant his brother; Alexander Fleming of Moneſs; Williame Douglas of Annatroche; Johnne New, ſervand to my Lord Oliphant; Donald Paterſone, ſervand to the Maiſter of Oliphant, and George Tyrie, meſſinger in Perthe.

Dilaitit of airt and pairt of the above ſlaughter, &c.

Eduard Toſcheoche, elder of Monyvaird, as ffather o vmq^le Dauid Toſcheoche, zounger of Monyvaird, produced the Letters deulie execute and indorſate vpoun Peter Blair, brother-germane to Andro Blair of Gairdrum; be vertew quhairof the ſaidis Laurence, &c. ar denuncet rebellis and put to the horne, for nocht

[1] Orig. MS. Adv. Library. [2] Orig. MS. preserved in Adv. Library. [3] See Dec. 4, 1618, Nov. 17, 1619, Mar. 12, 1623.

finding of cautioun for thair compeirance this day and place, in the hour of caus, to haif vnderlyne the law, &c. Vpoun the productioun of the quhilkis Letteris, the ſaid Eduard, with Archibald Campbell, brother to the Laird of Laweris, aſkit inſtrumentis; and Proteſtit for releif of George Biſchope of Orknay, cautioner.

Slaughter.

Jul. 29.—ALEXANDER HERVIE in Innerrowrie.

Dilaitit of airt and pairt of the Slauchter of vmq^le George Robertſone, ſervand for the tyme to Patrik Con of Auchry; committit within the duelling hous of Thomas Chalmer in Turray, in anno 1599 yeiris, be ſtreking him in the bellie with ane knyfe, quhairof he deceiſt.

PERSEWAR.

Alexander Soure, as brother on the mother ſyde, and ſerwand for the preſent to the Laird of Skeane.

PRELOCUTOURIS in defence.

Frances Erle of Errole, The Erle of Rothes, The Laird of Balquhanne, (Johnne Leſlie,) Mr Thomas Nicolſoune, Aduocat.

The perſewar, with Mr Andro Skene, producet Hoirning aganis the pannell, quhairby he is denuncet vpone the xxv of Julij inſtant, for nocht finding of cautioun to compeir this day to vnderly the law for the ſaid cryme; and thairupoun aſkit inſtrumentis, and proteſtit for his cautioneris relief, in reſpect na repoirt was maid to the officer, of the finding of ony cautioun, quhairby ane Aſſyſe mycht haif bene ſummond.—The pannell takis inſtrumentis of his entrie, and proteſtis for his cautioneris releiff: And as to the Hoirning producet, allegis the ſamyn is null, in reſpect cautioun was fund be him for his compeirance lang befoir his denunciatioun, viz. vpone the xxiij day of Julij of befoir: And as concerning the Slauchter lybellit, he offeris him ſelf to the tryell of the Law for the ſamyn, as altogidder innocent thairof, diſaſſenting to all maner of continuatioun; and thairupoun aſkit inſtrumentis.

THE JUSTICE continewis this dyet to the ſecund of December nixtocum; and Ordanis the pannell to ffind cautioun for his entrie that day, vnder the panes contenit in the Actis of Parliament.

The pannell, for obedience of the Juſtice ordinance, ffand Jonnne Leſlie, ffiear of Balquhane, cautioune for his compeirance befoir the Juſtice or his deputis, the ſaidis day and place.—The ſaid Alexander Hervie being ſuorne, maid fayth that he dred[1] bodelie harme of Alexander Soure (Sowre), inſafar as he had affirmet, in preſens of dyuerſe famous[2] perſones, that 'gif he gat nocht his intent befoir the Juſtice, that he ſould wair[3] his mother ſone vpone him alſo!' And thair-

[1] Dreaded; feared. [2] Persons of good fame and credibility. [3] Literally, expend; *i.e.* that he would hazard his own life in his endeavour to be revenged of him.

foir, desyret Lauborrus of him.—The said Alexander Soure declairit he had na cautioune, becaus he was bot ane puir man; and offerit *cautionem juratoriam.*[1]

The Justice Ordanit him ather to find cautioun and lauborrus for the indemnitie of the pannell, vnder the pane of ij^{c} merkis, or ellis to be tane to waird, to remane thairin quhill cautioun war fund.

Compeirit Mr Andro Skeane, and become souertie and lauborrus for the said Alexander Soure, that the said Alexander Hervie sall be harmeles and skaythles of him in his persone, landis, and guidis; and nawayis to be moleftit or trubillit be him thairin, nor be na vtheris of his causing, &c. vnder the pane of tua hundreth merkis.

(Jul. 30.)—Alexander Gourlay of Southane, in Fyfe, become plege, souertie, and lauborris for Alexander Sowre, &c. Mr Andro Skeane relieved.

(Dec. 2.)—The Justice, in respect nane of the Assyse compeiris, continewis all tryell in this matter to the thrid day of the nixt Justice-air of the Scherefdome of Aberdene, &c.—Johnne Leslie, fiear of Balquhane, become souertie and lauborrus for the said Alexander Hervie, that the said Alexander Sowre sall be harmeles and skaithles of him, &c. vnder the pane of foure hundreth merkis.

Stealing of a Purse.

Jul. 30.—Johnne Broune.

Dilaitit of the steilling of ane purse, with xxij li. being thairin, in Carnewath mercat, vpone Mydsomer-day last, quhilk pertenit to James Walker, cordiner in Lynlythgow; and he being schortlie thaireftir challenget, made restitutioun of the said purse and money bak agane to the said James.

Verdict. Convict of the steilling of the said purse.—Sentence. To be Scurget throw the burgh of Edinburgh, and Brunt[2] vpone the cheik: And to be Banischeit his Maiesteis haill dominiones, speciallie this his kingdome of Scotland; nevir to be fund agane within the samyn, vnder the pane of deid, but[3] fauour.

Forging of an infamous Pasquil against the Scotish Nation, &c.

[The Case of Mr Thomas Ross forms one of a series of sanguinary and barbarously vindictive acts of King James VI, which, unquestionably, must leave an indelible stain on his memory and character, as a despotic and cruel tyrant. It has already been frequently shown, in the course of this work, that whenever there occurred the slightest attack on his personal dignity, or any speech, lampoon, or other writing, at all infringing on his kingly prerogative, &c. his Majesty was relentless in the severity of the punishment, which he never failed to cause be inflicted on the luckless offender. As so many shocking Cases of this description have already been given in the present Collection, it is enough, without fatiguing the reader with any recapitulation, barely to refer him, among other cases of a

[1] Juratory caution. [2] Burnt; branded. [3] Without.

similar nature, to the Trials of *Diksoun*,[1] Aug. 3, 1569; *Tennent*,[2] Oct. 10, 1600; *Cornuall*, Apr. 25, 1601; and *Fleming*,[4] May 17, 1615; which are the leading instances of the insane and bloodthirsty spirit above alluded to.

With regard to *the facts* attending the case of Mr Thomas Ross, there seems to be no reason for doubting that they occurred almost exactly as they are narrated in the abstract of the Dittay, which has been preserved in the Books of Adjournal. In case, however, that this example should prove *infectious*, the Record informs us, that the offensive papers were 'gevin vp agane to my lord Aduocat,'[5] to be destroyed—'as nocht worthie to remane in ane Regiſter, to offend the earis or eyis of the poſteritie!' Every search has been made in the *Denmylne Collection* of MSS., and other Collections in the Advocates' Library, the Warrants of the Privy Council of Scotland, and other similar sources, but no trace can now be had of the *Theses* and *Annexa*, which must have proved very interesting and curious at this distance of time.

In order that the reader may have an opportunity of judging for himself, the Editor has made every enquiry in his power, for the purpose of elucidating this disgraceful and sanguinary page of the personal history of 'the British Solomon.' *Sir James Balfour*[6] gives the following account of this extraordinary tragedy. "THE 20 of Auguſt, this ȝeire, *Mr Thomas Roſſe*, a brother of the Houſſe of *Cragey, in Perthſhyre*, was ſentenced by the Juſtice-Generall to loſſe his head,[7] at the Croſſe of Edinbrughe; and therafter, the ſame head to be affixed one the jayle—for propoſinge certane villanous and opprobrious Theſes, in defamatione of his auen natiue countrey and countreymen, and affixing them on a Church-dore, in *Oxeford*, before ſermon, one a Tueſday; offring them to be publickly diſpute, and himſelue (miſerable wretche!) to defend them. This ſentence was put in executione within 2 dayes therafter."[8]—Another authority[9] narrates the proceeding thus. "MR THOMAS ROSS, Miniſter at Cargill, having been convicted by an Aſſize, at Edinburgh, of writing, at Oxford, in England, againſt the Scots Nation, was executed at Edinburgh.[10] His right hand was firſt ſtricken off; thereafter, he was beheaded, quartered, and put upon the Ports. He was of the Houſe of Craigie, being a ſon of John Roſs, Laird of Craigie, and went to Court. He wrote very unnaturally, and whereof he was not wiſe, againſt the Scots Nation. He was conveyed to Scotland in a ſhip. Mr Thomas Roſs was inſane, and his infirmity was pled in his defence. He affixed to the door of St Mary's Church, in Oxford, a Latin Theſis, in which were ten propoſitions; wherein he attempted to prove, that the Engliſh ought not to allow ſo many of the Scots to remain among them. The King was ridiculouſly incenſed, and ioſtead of confining him, as one in his condition needed to be, he ſent him to Scotland, along with ſtrict orders that he ſhould ſuffer death."

It seems very singular, when all circumstances are considered, that so remarkable an occurrence has been entirely passed over in silence by *Spotswood* and *Calderwood*, in their Church Histories.

There cannot be a doubt that *Mr Thomas Ross* was a man of an ancient, influential, and highly respectable Family; and the Editor believes, that having embraced Episcopacy, he had gone to prosecute his studies in Oxford. It would appear, from the preceding notices, that *Ross* had previously

[1] See Vol. I. 385. [2] *Ibid.* II. 332. [3] *Ibid.* II. 349. [4] *Ibid.* III. 359. [5] Sir William Oliphant of Newton. [6] *Annales*, MS. Adv. Library—and II. 70, Edin. 1824. [7] "In September 1618, *Mr Thomas Ros*, sone to the Lard of Cragie, wes, for vreting, at Oxfurd, in Ingland, aganis the Scottis natioun, being send to Scotland be schip, convict be ane Assyse, his richt hand first struckin aff, thaireftir beheadit."—MS. Adv. Library. [8] An obvious oversight of *Sir James Balfour*, who had probably noted down the day of his intended execution—omitting to rectify the date, after the King's Warrant had been received. [9] *The Rev. James Scott's* transcript of the *Diary* or *Chronicle of John Mercer*, who was appointed Town-Clerk of Perth, Oct. 6, 1623, and lived to a great age. Orig. in Adv. Library. The Editor has the pleasure of notifying, that this interesting Diary is preparing for publication by his friend *James Maidment, Esquire*, as his contribution to THE MAITLAND CLUB, the Members of which have chiefly directed their attention to the printing of Historical works illustrative of Scotish affairs. [10] "2 Sep. 1618. MR THOMAS Ross, Minister at Cargill, went to Court; and thair, for sum infamous writtingis, and railling aganes the Scottis Natioun, werie onnaturallie, being on of the sones of the Hous of Cragie; quhairof he wes not wyise. He wes headit in Edinbrughe, quharterit, and putt wpon the Portis."—*Fleming's (Mercer's) Chron.* MS. Adv. Library.

been *Minister of Cargill;* and as he is so designed in these accounts, it is likely that he had not been deprived of his living before the period of his execution. The conduct of King James in the whole of this matter, and his barbarous treatment of *Ross*, become altogether inexplicable, when it is considered, that at this very time, he was struggling to force Episcopacy upon the people of Scotland, as the permanent and established Religion of the country. In such circumstances, it seems strange indeed that he should have so rancorously pursued so zealous a convert to the forms and tenets of the Church of England, at the precise time that that person (a *Minister*, too, of the Kirk of Scotland) was doing every thing in his power to qualify himself for effectually pleading and maintaining the establishment of Episcopacy—a measure so near James's heart. *Ross*, however, had, for the indulgence of some mad and absurd frolic, written the Pasquil or Thesis in question, and affixed it to the Church-door of *St Mary's, Oxford*, as was then usual at all the great Universities in Europe, where public disputations were often held.[1] It was pleaded by the unfortunate man, that he had done so in a fit of *insanity*, which seems to have been credited by his contemporaries;—but all these circumstances combined, could not induce the King to save his life; on the contrary, they only inflamed his rage the more against poor *Ross*.

The only thing which can be urged in palliation of the rigorous sentence, which the King insisted on being put in execution, is, that at the time when King James succeeded to the English Throne, and for a long time after, the Scotch were peculiarly unpopular in England, and such swarms of needy adventurers had travelled southward, that not only were the greatest jealousy and hatred manifested on the part of the English, but it actually became necessary that a legislative enactment should be made, to prevent bloodshed and scenes of violence throughout the country. As remarkable instances of the rancorous feelings which existed against the Scotch, a curious passage may be cited from *Calderwood*,[2] which forcibly illustrates the state of the public mind, in England, upon this subject.—'The Scotishmen lying at Court were in danger of their lives, be reafone of the great malice of the Englifh conceaved againft them. *Sir John Ramfay's* brother fmote *the Lord Montgomeries* brother on the face, with a rod, for a lie given him at a Horfe-race. There were prefent about ane hundreth Scotifh-men, all in danger to be maffacred, if the Englifh had not been ftayed by a Counfellor. *James Maxwell*, one of the Gentlemen of the King's Chamber, pulled ane Englifhman's eare till it bleade. Oure countrymen durft not repair foe frequently to the Exchange or Comedies as they did before. The *Lord of Kinloffe* was in great danger at a Comedie, but was convoyed fecretly away be ane aged gentleman, who was weill acquent with his father. This lybell was affixed in open places,—

'The Scots doe whippe our Noblemen with rods—They kill our fencers tratrously under traust.'

'*The Lord Sanquhar* indeid hired two Scotifhmen to kill ane Englifh fencer, who, fix or feaven years before, had putt furth his eye at fencing! They killed him in an Innes, whilles he was putting the cupe to his head. To content the Englifh, the King confented that *Sanquhar* fhould be *hanged*. For the greater contempt of our Nobility, he was hanged among a number of Theaves!'

It is barely possible that the King may have discovered certain indications at Court, which, in a manner, forced him to sacrifice *Ross*, for the purpose of checking in the bud any future attempts at

[1] It may be esteemed worthy of remark here, that a shadow of this ancient custom is still observable at the Scotish Bar, where, previous to the inauguration of each candidate for admission into the body of the Faculty of Advocates, a *Thesis*, with its *Annexa*, is publicly notified on the walls of the Parliament-House—and especially at the *outer-door* of that Hall. It intimates that a public disputation, "*Disputatio Juridica*," is to be held on a certain day, under the auspices of the Dean of Faculty; and the subject-matter of the *Thesis* is thus notified. Originally, the candidate had stoutly to maintain his ground against all comers, in the Latin tongue. It is almost unnecessary to add, that this *Disputatio Juridica* has now degenerated into a piece of empty form; in point of fact, it is "elegantly understood"—as no disputation whatever takes place, excepting that which is apt to arise with the printer and bookbinder, who are the only parties at all benefited by this edifying solemnity. It is high time that such an useless waste of money should be prevented—and the sum at present bestowed in this way appropriated to the support of the splendid Library under the charge of the Faculty. [2] *Church History*, Adv. Library, MS. *ad ann.* 1612.

fomenting these nationa ealousies. This, however, is merely matter of conjecture, and the only plausible apology which can be adduced for the perpetration of so tyrannical an act.

A very extraordinary instance of the same insane rage upon the part of the King, we learn from a rare Poem, entitled, a 'Counter-buffe to Lyſimachus, Junior, calling himſelf a Jeſuite;' quarto, 1640, pp. 16;[1] where the fate of STERCOVIUS, *a Pole*, is alluded to. That stranger had unhappily appeared in Scotland in the dress of his native country, which attracted the attention of the idle, and brought down upon him the derision and abuse of the populace.

'Hither he came, clade all in antique ſort,
Where ſeen in ſtreets the ſubject of a ſport,
He ſoone became to childiſh gazers, who
With ſkriecks and clamours hiſs him to and fro,
Till forced he was with ſhame and ſpeed to pack him,
And to his feet and loathſome cabin take him!'

Nettled at such rude and inhospitable treatment, he published 'a Legend of Reproaches' against the Scotish Nation, shortly after his return home; which, having reached the ears of his 'most sacred Majesty,' he procured the *arrest and execution* of the hapless STERCOVIUS! This out-herods Herod, with a vengeance! The death of this Pole was accomplished at an expense to the King of no less a sum than *six hundred pounds sterling*—an immense sum in those days. The instrument whom JAMES employed was one *Mr Patrik Gordon*,[2] a subject of Scotland, then resident in Poland. With a dexterity for which the sapient James was celebrated, he attempted to extort the price of this innocent man's blood from the *Royal Burghs of Scotland!* It is believed, however, that he was foiled in that attempt, by the Privy Council declaring themselves incompetent judges of the matter.[3]

In a very curious Collection, privately printed at Edinburgh, 1828, 'A Third Book of Scotiſh Paſquils,'[4] the cases of *Ross* and *Stercovius* are particularly noticed; and a copious extract from the 'Counterbuffe' is there given. That singular Poem introduces *Ross's* story thus—which is enough for our present purpose.

. . . . 'A *Scot* of ancient race,
A ſcholler, too, as thou art, lived a ſpace
In England's Court; and for ſome private hate,
A Paſquill did againſt his country wreat,
As thou haſt done in fouler ſort; more full
Of vild aſperſions from thy phrantick ſkull!
Well, then, King *James* of laſting memorie, who
Could not brook that any calumnie
Should be aſperſt upon his native land—
After ſome tryall there, he gave command
The Lybeller ſhould home go, and ſuſtaine
Of doome unpartiall laws th' unpitied paine.
And here being tryed, judged, and adjudged, they fand
That he ſhould loſe his head and faultie hand;
Which ſtraight was done, in public view—and ſo
I thinke the matter with thyſelf will go!'

THE FAMILY OF ROSS OF CRAIGIE, near Perth, were probably a branch of the Family of the ancient *Earls of Ross*, and were reckoned among the most respectable Families in the shire. Many

[1] A copy is in the valuable Collection of David Laing, Esquire. [2] Probably the author of the 'History of the Valiant Bruce,' in heroic verse. Dort, 1615; quarto. [3] See Decreet of Lords of Privy Council, in *Charter-room of the City of Edinburgh*. [4] Prefatory Notice, xii. The two preceding 'Books' bear date, 1827, and 1828.

particulars concerning them are to be found in History so early as the reign of Robert Bruce, and in the records of the Religious Houses at Perth, to which they were benefactors. *Nisbet*, in the Appendix to his second Volume,[1] gives a list of some of the distinguished Families in the Kingdom to whom they were allied.[2]

It cannot be disguised, that however honourably born this family may have been, various members of it figured in Books of Adjournal, and others of them suffered the last punishment of the Law, for their crimes. John Roise of Craigie, James and Williame Roise, his brothers, John Roise, servant to vmq^le James Roise in Maitlandis, Lancelot Moncrief, servant to the Laird of Craigy, were, along with William Lord Ruthven, Henry Lord Methven, and others, brought to the bar of the Court of Justiciary, Nov. 12, 1571, for Oppression, Hamesucken, Convocation of the Lieges to the number of two hundred armed persons, besieging the Place of Dupplin, &c.[3] This appears to have proceeded entirely from one of those deadly Feuds which were unhappily so common in Scotland at that time. Their antagonist was Laurence Lord Oliphant. But the most atrocious instance which the Editor can at present recollect, occurs in *Fleming's Chronicle*,[4] under date Apr. 8, 1608; where it is recounted, that 'Patrik Eviot, brother-german to *the Laird of Balhouſſie*, wes murtherit in Blelok be his wife, Jonet Ross, quha wes air to the Lairdſchip of Craigie and Kynfawnes, both. He wes ſchote with ane gun in his bed, ſleiping, be *James McNair*. Thairefter, they wer both taikin and execute—and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 of Maij, 1608. The heid and arme putt wp on the Caſtell-Gawill-Port.' It will be recollected how narrow an escape *Patrick Eviot*, the husband of *Jonet Ross*, had previously made, when he was attacked by Sir Henry Lindsay of Carreston.[5]

After the death of Jonet Ross, the heiress of Craigie, (who seems to have wished to transfer, by marriage, her large estates to her blood-stained paramour, *James McNair*,) her uncle, *Robert Ross*, succeeded to the Estate of Craigie. *The Laird of Balhousie* at this time was *Colin Eviot*. The Reverend Mr Scott informs us, that "*Patrick*, his brother, had suffered trouble and loss by a sentence of Parliament, for the friendship he had expressed to the Earl of Gowrie, in 1600. The *Eviots* had been proprietors of the lands of Balhousie and Muirton, near Perth, for more than three hundred years. They were great benefactors to the Religious Houses, especially to the Black Friars' Monastery, at Perth; and some of the younger sons of the Family were in Clerical Orders. *Colin Eviot* was succeeded by his son *Patrick*, who, before 1618, had sold the lands of Balhousie to *John Matthew*, and was himself designed Patrick Eviot of Muirton. He was married, and had children."

The reader's indulgence is requested for the minuteness and prolixity of this Notice; which, however, has proceeded from the Editor's anxiety to throw all the light in his power on so extraordinary a Trial.]

Aug. 20.—Mr Thomas Roise, ſone to vmq^le Johnne Roiſe of Craigie.

Dilaitit of the devilliſche and deteſtable fforgeing, ffenȝeing, blaſphemous vttering, and by writ publictlie expoſeing, of ane villaneous, infamous, and devilliſche Writt, all writtin with his awin hand, concerninge ane Pasqueill or These; togidder with ten ſeuerall abhominable articles or appendices, confirmeing the ſamyn—that all Scottismen aucht to be ſchote[6] furth of the Court of Ingland, excepting his gracious Maiestie, his ſone, and ane verrie few vtheris, and that the Inglischmen ar michtillie blindet, fylet, and diſſauet,

[1] *Nisbet's Heraldry*, App. to Vol. II., p. 23. [2] See MS. Transcript of *Mercer's Chronicle*, before quoted, and noticed by *the Reverend Mr Scott*, Adv. Library. [3] See this Collection, Vol. I., p. 25. [4] Advocates' Library, MS. [5] See this Collection, Vol. II., p. 409; Feb. 1, 1601. [6] Ejected; thrust out by violence.

(althocht quik-ſichtit vtherwayis,) that thay ſould ſuffer ſic ane vnproffitable and pernitious multitude and filthie aff-ſcoureingis of people to radge and dominire within thair boundis and intrallis, &c.

My lord Aduocat producet the ſaid Mr Thomas Roiſe Dittay, togidder with ane directioun of the Counſell, vnder forme of Act, ordaning him to perſew the ſaid Mr Thomas for the crymes thairin contenit.

DITTAY *againſt Mr Thomas Roiſe.*

MR THOMAS ROISE, ſone to vmq^le^ *Johnne Roiſe of Cragie*, ȝe ar indytit and accuſet, FORSAMEKILL AS, albeit it be expreſſie provydit, ſtatute, and ordanit, be dyuerſe Actis of Parliament, alſweill maid be his Maieſtie as be his hienes progenitouris, of worthie memorie; ſpeciallie, be the 43 Act of the ſecund Parliament of King James the firſt, intitulat, 'that Lieſing-makeris tynes thair lyfe and guidis:' And ſiclyk, be ane Act maid be King James the ſecund, the 100 Act, contenit in the auld prentit Actis of Parliament, the foirſaid Act is ratifeit in all pointis, and Ordanit to be put in executioun in all tyme cuming; be the whilk, it is ſtatute, 'that Leaſing-makeris ſall tyne lyfe and guidis to the King, and be at his Will:' As lykwayis, be the 134 Act of the aucht Parliament, haldin be his Maieſtie, our darreſt ſouerane, him ſelff, and his hienes Eſtaittis, in the moneth of Maij, 1584; and in the tent Parliament, haldin alſo be his Maieſtie and his Eſtaitis, the tent of December, 1585, *articulo primo*, intitulat, 'Authouris of ſklanderous ſpeiches or writtis ſalbe pwneiſchet to the deathe.' Quhilkis Actis ar ratifeit and approvin in his Maieſteis fourtene Parliament, haldin the aucht of Junij, 1594: And be dyuerſe vtheris Actis, alſweill maid be his Maieſteis ſelff as his Maieſteis progenitouris of renowned memorie, that all Lieſing-makeris and telleris of thame, quhilk may ingender diſcord betuix the Kingis Maieſtie and his people, quhair euir thay may be gottin, ſall be challanget be thame that power hes, and tyne thair lyfe and guidis to the King; and that nane of his ſubiectis, of quhatſumeuir functioun, degrie, or qualitie, ſall preſume or tak vpone hand, privatlie or publictlie, in Sermones, declamationes, or familiar conferences, to vtter ony fals, ſklanderous, or vntrew ſpeiches, to the diſdayne, reproche, or contempte of his Maieſtie, his Counſall, and proceidingis; or to the diſhonour, hurt, or preiudice of his hienes, his parentis, or progenitouris; or to meddle in the effairis of his hienes and his eſtait, ſteiring vp his hienes ſubiectis to miſlyking, ſeditioun, or vnquyetnes; and that nane preſume or tak vpone hand, publictlie to declame, or privatlie to ſpeik or wryte ony purpois of reproche or ſklander of his Maieſteis perſone, eſtait, or gouvernament; quhairby ony miſlyking may be movet aganis his hienes and his nobilitie, and loveing ſubiectis, in tyme cuming; vnder the pane of death, to be inflictit vpone thame with all rigour: As the ſaidis Actis of Parliament in thame ſelffis

proportis. NOCHTWITHSTANDING quhairof, it is of verritie, that ye, the ſaid *Mr Thomas*, in the moneth of Julij laſtbypaſt, contrair to the tennour of the ſaidis Actis of Parliament, hes falſlie, ſklanderuſlie, calumniouſlie, diſpytefullie, and devilliſchlie, within the toun of *Oxfurd*, in INGLAND, fforget, ffenȝeit, and blaſphemouſlie vtterit, and be writt expoſet publictlie to be red and defendit be yow, (as ye affirme by your devilliſche writt,) within THE VNIUERSITIES OF OXFURD, CAMBRIDGE, PAREIS, and vtheris places mentionet in that villaneous, infamous, and devilliſche Writt; all writtin with your awin hand, in Latine, aue Propoſitioun or Theſe, contening ten ſeuerall abhominable articles and (appendices), confirmeing the ſamyn, that all SCOTTISMEN aucht to be ſchote furth of *the Court of* INGLAND, (excepteing his gracious MAIESTIE, his ſone, and ane verrie few vtheris,) and that the INGLISCHMEN ar michtilie blind, fylet, and diſſauit (althocht quik-ſichtit vtherwayis) that thai ſould ſuffer ſic ane vnproffitable and pernitious multitude and filthie aff-ſcoureingis of people to radge and dominire within thair boundis and intrallis. To the quhilk Propoſitioun, ye haiff ſett doun and ſubioynet ten ſeuerall fals reaſones, leaſingis, and vntreuthis, for confermeing your devilliſche propoſitioune. (Quhilkis ten reaſones ar repeitit in this place as ane pairt of your Dittay, bot purpoiſlie omittit and left out heirof, as nocht worthie to remane in ane Regiſter, to offend the earis or eyis of the poſteritie.[1]) The quhilk blaſphemous, iniurious, ſklanderous, and devilliſche propoſitioun, and ten reaſones, as ye terme thame, ſubioynet be yow thairto, for confirmatioun thairof, all writtin with your awin hand, ar ffals and manifeſt leaſingis and vntreuthis; and war affixt be yow (maiſt impudentlie, as ane liear and defamear of your countrie and natioun, nocht worthie to haif inioyit the naturall air thairof) vpone *the Marie-Kirk-dur* of the ſaid VNIUERSITIE OF OXFURD, vpone ane Twiſday, being ane preiching-day, in the ſaid moneth of Julij laſt, as the people war diſſolueing and ſkailling fra the ſermone, and as *Doctour Godwene, Vice-Chancellour of the Vniuerſitie of* OXFURD, was cuming out of the Kirk; to the intent the ſamyn mycht be publictlie red and diſperſit amangiſt his Maieſteis ſubiectis of INGLAND: Off plane purpois and intentioun thairby to haif ſteirit thame vp to the crewall, barbarous, and vnmercifull murdering, maſſacreing, and aſſaſine of the haill SCOTTIS people, alſweill noble men and counſalouris as vtheris of the SCOTTIS NATIOUN quhatſumeuir, his Maieſteis guid ſubiectis and ſervandis, attendantis vpone and about HIS MAIESTEIS royall perſone in Court; quhilk could nocht haif bene accompliſchet without the extreme danger and perrell of HIS MAIESTEIS ſacreid perſone, his gracious QUENE, and of THE PRINCES hienes. In the doing quhairof, ye haif

[1] (Marked on the margin,) 'Thir Theſis, with the argumentis or reaſones ſubioynet pairto, ar gevin vp agane to my lord Advocat.'

ſforget, maid, and writtin innumerable leaſingis, ffalſe, ſklanderous, and vntrew ſpeiches and wrytingis, quhilk mycht haif ingenderit diſcoird betuix his Maieſtie and his guid ſubiectis; to the diſdane, reproche, and contempt of his Maieſtie and his noble progenitouris and thair proceidingis, and of your natiue countrie, nocht worthie to haif the name of ane borne ſubiect thairin; and thairby, hes medlit with his hienes effairis, eſtait, and gouvernament, maiſt ffalſlie, barbaruſlie, and vnnaturallie; contravening thairthrow (ye being ane SCOTTISMAN, albeit vnworthie) the tennour of the Lawis and Actis of Parliament thairof, and incurring deſervetlie the panes and pwneiſchment aboue written, mentionet thairintill; quhilk aucht and ſould, in maiſt exemplarie maner, be inflictit vpone yow, with all rigour; to the terrour and example of vtheris to attempt the lyk. Quhilk is m air nor nottour, and ye can nocht deny.

MY LORD ADUOCAT producet the ſaid Mr Thomas Roiſs Dittay, togidder with ane directioun of the Counſell, vnder forme of Act, Ordaning him to perſew the ſaid Mr Thomas for the crymes thairin contenit.

The ſaid Mr Thomas, eftir reiding of the Dittay, and his accuſatioun of the crymes mentionat thairintill, acknowleges and confeſſes the ſamyn crymes to be of veritie; declairing that THE THESIS producet war writtin be him furth of ane mad and diſtemperat humour, being *inops mentis* for the tyme; quhilkis he now, from his heart, repentis; craueing God, his Maieſtie, and haill cuntrie people[1] pardoun for that his offence: And offeris him ſelff in his Maieſteis will, being a gracious Prince, quhais Royall diſpoſitioun, in all his proceidingis, hes ever inclynet rather to mercie, quhilk is the richt hand of God, nor[2] to the rigour of Juſtice, quhilk is his left hand: Deſyreing thairfoir, in all humilitie, my lord Juſtice and Lordis of his Maieſteis Counſall preſent,[3] to interceid at his Maieſteis handis, for fauour in his behalff.

My lord Aduocat takis inſtrumentis of the pannell his Judiciall acknowlegement and Confeſſioun of the cryme contenit in his Dittay.

THE JUSTICE ffindis the Dittay relevant, and Ordanis the ſamyn to be put to the knawlege of ane Aſſyſe of the perſones ſummond to that effect.

ASSISA.

James Somerwell of Spittell,
James Levingſtoun of Jeriſwoid,
Patrik Hunter of Hiltarvet,
Johnne Achieſoun, portioner of Inuereſk,
George Redik, Shereff-depute of Kirkcudbrycht,
Johnne Levinſtoun of Hayneing,
Robert Johnnſtoun of Wamfray,
Jas Douglas, portioner of Lugtoun,
Eduard Johnneſtoun, elder, burges of Edinburgh,
Johnne Ker, portioner of Dudingſtoune,
James Hoppringile of Heriote mylne,
Robert Phillope, Schereff-clerk of Dumfreis,
Mr James Ord,
George Carnebie, burges of Edr,
Hew Rois of Balnamukie.

Eftir ſweiring of the Aſſyſe, the ſaid Mr Thomas of new agane, in thair

[1] Countrymen. [2] Than. [3] Sitting as Assessors. Their names are not recorded.

prefence and audience, confeffes the wryting and affixing of the Theses and Appendices following thairupone; and that the Theses producet ar the famyn that was writtin and affixt be him: And as ofbefoir, he offeris him felff in his Maiefteis will for that offence.

My lord Aduocat takis inftrumentis of the fweiring of the Affyfe: and for verificatioun of the Dittay, produces the foirfaidis Thesis or Propositioun, with the ten fals and vntrew argumentis or reasones following thairupone, all writtin with the faid Mr Thomas awin hand. Repeittis the faid Mr Thomas Judiciall Confeffioun, firft maid in prefens of the Juftice, and thaireftir renewit be him in the faid Affyfe prefens and audience; and his becuming in his Maiefteis will, as guiltie and culpable of the faidis crymes: And lykwayis produces, for the faid Affyfe forder informatioun, the faid Mr Thomas awin Depofitiones maid and fubfcryuit be him at Edinburgh, the xj Auguft inftant, in prefens of his lordfchip, as his examinatour, nominat and appointit be the Lordis of his Maiefteis Secreit Counfell. And in refpect thairof, and that the faid Mr Thomas, eftir reiding of his Depofitiones to him judiciallie, in prefens of the Juftice and Affyfe, abydis thairat, and that thairby the faidis crymes ar clerlie verifeit and provin with fa manifeft probabilities; in caice ony of thame acquit the pannell, (as he thinkis nane of thame will be fa voyde of knawlege or confcience fa to do,) Proteftis for wilful and manifeft Errour, with all perrel of the Law that may follow thairupoune.

Verdict. The Affyfe,[1] being ryplie and at lenth advyfet thairwith, togidder with the villannous and infamous Pafqueill or Thefes, and damnable Appendices fubioynet thairto; his Judiciall Confeffioun and acknowlegeing thairof, and becuming in his Maiefteis will for the famyn, as altogidder giltie and culpable thairof; his fubfcryuit Depofitiones, producet be our fouerane lordis Aduocat, for cleiring and inftructing of the faid Dittay; togidder with the feuerall Actis of Parliament quhairvpone the faid Dittay is foundit; thay all in ane voce, be the repoirt and declaratioun of the faid Johnne Levinftoun, chanceller, ffand, pronuncet, and declarit the faid Mr Thomas to be Giltie, culpable, and convict of the faid devillifche fforgeing and expofeing, be writt, of the faid villannous and ffalfe Thefes, and ffalfe and damnable Appendices fubioynet thairto; and affixing the famyn (thay being manifeft leyis and vntreuthes) vpone the faid Kirk dur, in forme and maner fpecifeit in his Dittay; and of the famyn Dittay, and haill crymes contenit thairintill, and of contravening, thairthrow, the tennour of the faidis Actis of Parliament; quhairby he hes incurrit and fallin vnder the danger,

[1] Mr Alexander Hammiltoun of Kinglas; Raulf Ker, bailzie of Lauder; Robert Moutray of Seyfeild, ... Allardice of Skadowie; Charles Cairnecrofe of Birkfneip; Johnne Paterfone, Schereff-clerk of Fyfe; Johnne Haitlie in Sneip; Danid Ramfay in Pethbeid of Lefuaid, ... Portious of Glenkirk, and Robert Creichtoun, brother to Innernytie; ilk ane of thame vnlawit in the pane of ane hundreth merkis, for thair nocht compeirance vpone the faid Mr Thomas Affyfe.

and within the compas of the panes and pwneiſchment mentionet thairintill, juſtlie merited be him.

THE JUSTICE, in regaird of his convictioun, Ordanit him to be tane bak to waird, and to be keipit in irnes, quhill his Maieſtie by acquentit with his convictioune, and quhat exemplarie pwneiſchment ſall be execute vpone him for his offence.

Sep. 10.—SENTENCE. The Juſtice, conforme to ane Warrand and directioun of his Maieſtie, direct to my Lord of Bynning, his hienes Secreter,[1] be the mouth of Johnne Dow, dempſter of Court, Ordanit the ſaid Mr Thomas to be tane to the Mercat-croce of Edinburgh, and thair, vpone ane ſcaffold, firſt his rycht hand to be ſtrukin aff, and thairefter his heid to be ſtrukin frome his body: And his heid to be thaireftir affixt and ſet vpone ane irne prik vpone the *Nether-boll-Poirt;* and his ſaid rycht hand to be alſo affixt vpone the *Waſt-Poirt* of the ſaid burgh of Edinburgh: And his haill moveable guidis and geir, &c. (gif he ony hes) to be eſcheit to his Maieſteis vſe, as convict and culpable of the ſaid haynous cryme.

CURIA JUSTICIARIE, *&c. per M. Rob. Fairlie, Juſticiarium ſ. d. n. Regis, hac in parte, virtute Commiſſionis Dominorum Secreti Conſilij, ſpecialiter conſtitut.*

Mutilation.

Nov. 4.—WALTER SCOTT, ſone to Johnne Scott in Newwark.

[1] The following extraordinary composition has fortunately been preserved among the *Denmylne MSS.*, Advocates' Library—but the King's 'Warrand and directioun' has probably been too pithy to have been filed by that obsequious courtier the 'Secretar,' even in his private Collection, as being considered too strong meat for posterity! Having the fear of his Majesty before his eyes, he perhaps felt that his own head and hand might be called on to answer for disobeying the strict injunctions given him.

MOST SACRED SOUERANE,

THE furious wretche MAISTER THOMAS ROS, wes, according to your MAIESTIES commandement, put to his tryall, and conuicted of the haynous crymes conteaned in his diueliſh Paſquil, produced for verificatioun of his guiltines, to the Aſſyſe. The Dome is delaied till your MA^TIE be pleaſed to ſignifie your royall determination in it.

His malitious freneſie is ſo mixed with preſumption of his owne wourth, as he thinkis the vſe of his learning and eloquence neceſſar to the world; and that his paſſioun having furneiſſed ſo much ſtuf, in ſo bad a pourpoſe, he is able, in ane ſubiect ſo wourthie and true as the commendation of your Royall guiftes of bodie and mynd, and moſt princelie actions, to kythe miracles in dew publeiſſing thairof! To this ſenſe, he ſpak in jugement: And leauing to your MAIESTIES euer gracious clemencie, multiplied exemples of diuine and humane Hiſtories, to the commendatioun of the famous Princeis who had gracioufflie pardoned heigh offences; adding exemples of manie, who being tranſported be paſſion to madnes, had thairefter recouered thair ſetled jugement, and done great and wourthie materis; promeiſing no les of him ſelf.

Your MAIESTIES Aduocat has wyſelie conſidered, that the infame of his Dittay meritis not to be inſert in the Regiſter of the Adiornall. Alwayis I haue ſent to James Douglas the copie of the proces, that when your MA^TIE deſyres to ſie it, he may haue it reddie, and may conceale it from all vthers. So exſpecting the ſignification of your MAIESTIES farder pleaſour, anent this vnnaturall and furious foole, I beſeik God long to preſerue your MAIESTIE in perfection of all honour, happines, and contentment.

Your moſt ſacred Maieſteis moſt humble, faithfull, and bund ſubiect and ſeruant,

ED^R, 22 Aug. (1613.) BINNING.

TO THE KINGIS moſt ſacred MAIESTIE.

Dilaitit of airt and pairt of the hurting, wounding, and mutilatioun of Adame Dalgleiſche, ſone and appeirand air to Johnne Dalgleiſche of Deuchar, of thre fingeris of his left hand; committit in the moneth of Auguſt, 1617 yeiris, at Murieſones-hill, beſyde the burgh of Selkirk, vpone ſet purpois, prouiſioun, and foirthocht fellonie.

Persewaris, Adame Dalgleiſche, Sir Williame Oliphant, knyt.
Prelocutour in defence, Mr Thomas Nicolſone, Aduocat.

It is allegit be the pannell and his prelocutour, that this matter can nocht be put to ane Aſſyſe; becaus, gif ony hurt or mutilatioun was gevin be him to the perſewer, nocht granting the ſamyn, it was done in his awin defence; inſafar as, vpon the ſevint of Auguſt 1617, the pannell was ſet vpone be Adame Dalgleiſche, perſewar, neir to the toun of Selkirk, and was crewallie hurt be him: ffor the quhilk, the ſaid Adame, vpone the xxvj day of Marche 1618, being ſummond befoir the Scheref of Selkirk and his deputis, to vnderly the Law for the hurting and wounding of the ſaid Walter Scott, defender, in the heid, to the effuſione of his bluid in grit quantitie, was, be ane Aſſyſe of xv ſworne men, ffund gyltie, and convict of the bluid and bluid-wyte: And producet the Rolment of Court, for verificatioun thairof, vnder the ſubſcriptioun of Alexander Wilkieſoun, clerk of the ſaid Schereff-Court. *Secundo*, the Dittay is nawayis relevant to pas to the knawlege of ane Aſſyſe, becaus *mutilatio eſt tantum amputatio membri;* and thair is na member cuttit af, ffor the perſewaris haill hand, and fingeris thairof, ar yit extant be occulour inſpectioun; and he is able to move his hand and fingeris, and to grip thairwith.

It is anſuerit be the perſewaris, that the allegeances foirſaidis aucht to be repellit, in reſpect of the ſummondis and Dittay producet; with ane Teſtimoniall of the Chirurganes, ſubſcryuit be the Deacone and thre of his bretherene, teſtiefeing the mutilatioun, togidder with the perſewaris awin mutilat hand, mutilat in thre fingeris thairof ſchawin judiciallie to the Judge. And as to the Rolment of Court producet, na reſpect ſould be had thairto, the ſamyn being altogidder null and repugnant to the lawis of this realme; be the quhilk, ane Sentence is gevin out in ane Criminall matter, the pairtie accuſed nocht compeirand, convictand him of ane cryme; quhairas, be the Law, (he nocht being preſent nor compeirand,) he aucht nocht to haif bene put to ane Aſſyſe; bot the maiſt that could haif bene done be the Schereff in that Judicatorie, was allanerlie, to haif vnlawit him *in pena contumacie:* And albeit the Schereff and his depute wald geve out his or thair Teſtimoniall, that the ſaid Adame Dalgleiſche, quha is mutilat, was the perſewar, na reſpect ſould be had thairto, becaus that is na pairt of thair office: And thairfoir, na reſpect ſould be had to the Rolment of Court.

To the quhilks, it is replyit be the pannell, that the Rolment of Court is ſufficient to inſtruct his allegeance; becaus, quhatevir the pannell did, it was in

his awin defence, in reſpect of the forme of proceiding vſet in the Scheref Court, quhilk is, to put the pairtie accuſet to ane Aſſyſe, albeit he be abſent and compeiris nocht; alwayis,[1] it is ſufficient to inſtruct that pairt, that he is convict of the bluid and bluid-wyte, and was *contumax*,[2] and compeirit nocht; quhairupoun he tuik the cryme vpone him: And as for that pairt of the allegeance maid be the pannell, that the taking away of the finger is nocht *amputatio membri*, becaus the finger is nocht *membrum*, bot *pars membri*, as ſayis BALDUS, Leg. *non ſunt liberi*, ff. *de ſtatu hominum*,—whois wordis ar, *Nota, digitus non dicitur membrum ſed pars officialis membri; et ſic amputans digitum non dicitur amputare membrum:* And BARTOL. Conſilio 201, ſayis, *Queritur numque digitus ſit membrum? Reſpondetur quod non, ſed potius pars ſiue officium membri; per Legem, non ſunt liberi*, ff. *de ſtatu hominum.*—*Tertio*, the perſewar is nocht mutilat in thais thre fingeris, becaus he is able to grip with thame and hald; and ſa thay ar nocht vnproffitable.—*Laſt*, thair can na payne of the body be inflictit, albeit the thre fingeris was mutilat, as is allegit; becaus na pane corporall can follow, ſeing na death followit; bot only ane arbitrarie and pecuniall payne, to be modifeit be the Judge.

It is anſuerit be the perſewaris, to that pairt of the allegeance proponit, that the cutting af of ane finger is nocht mutilatioun, it is nocht pertinent to this purpois; becaus the perſewar complenis that he is mutilat of thre fingeris, quhilk ar nocht cut aff, bot mutilat and maid vnhable, quhairby he hes nocht the full and rycht vſe, nather of his thre fingeris, nor yit of that hand: And as for the mutilatioun it ſelf, and verritie thairof, it is verifeit be oculour inſpectioun, and be the Chirurganes Teſtimoniall producet: And quhair it is allegit, that the Rolment of Court producet, is only vſet bot to verifie that the perſewer is culpable of the bluid and bluid-wyte, repeitis the anſuer maid thairto of befoir, with this eik,[3] that the Schereff had na power to put him to ane Aſſyſe, he nocht compeirand; ſa that the Declaratioun maid be the Inqueiſt, aucht nawayis to be reſpectit: And as to the Schereff, he had nocht power to geve ony Declaratioun thairupoun; and the pairteis contumacie and abſence is na cauſe to convict him of the bluid or bluid-wyte; and becaus of his abſence, he could be na forder convict bot in payment of the vnlaw; ſua that, in reſpect of the premiſſes, na reſpect aucht to be had to the Rolment of Court or ony pairt thairof: And albeit a pairtie be *contumax* and compeir nocht, that contumacie convictis him nocht of the cryme; vtherwayis, gif ane pairtie war *contumax*, it war nocht neidfull to put him to ane Aſſyſe of new, quhilk war ane grit abſurditie; ſeing, ſindrie perſones being ſummoned to compeir befoir the Juſtice Generall and vtheris Judges in Criminall cauſſes, thay purge thair contumacie, and offer thame ſelffis to ane tryell; and cowmonlie thay ar clanget be the Aſſyſe; as was

[1] At all events. [2] Contumacious; showed contempt of Court by not appearing. [3] Addition.

ffund in this Judgment, betuix *Cunninghame* and *Wylie*. And as to the Doctouris of the Law allegit, na reſpect aucht to be had thairto in this Judicatorie, in reſpect of the inviolable practique obſeruet within this realme; quhairin, mutilatioun of ony pairt of ane mannis perſone, be the quhilk he is fruſtrat of the rycht vſe thairof, is put to ane Aſſyſe determinatioun; the Juſtice advyſes and reſolues vpone the pwneiſchment, be advyſe of the Lordis of Secreit Counſell.

The perſewar Reſtrictis this Lybell to the mutilatioun of the thre laſt fingers of his left hand allanerlie.

It is forder allegit be the pannell, that he can nocht be put to ane Aſſyſe for the mutilatioun lybellit; in reſpect, gif ony hurt or mutilatioun be gevin to the perſewar, it was done be the perſewar him ſelf, in drawing of his awin ſuord the tyme lybellit; quhilk he has dyuerſe tymes confeſſit to Andro Scott Chirurgane, and vtheris; and deſyres the perſewaris ayth to be tane thairupoun.

The perſewar, being ſolemnlie ſuorne vpone the laſt allegeance, anent the mutilatioun be him ſelf with his awin ſuord; he, be his grit aith, denyit the ſamyn; and affirmet that he was mutilat be Walter Scott, defender, and na vther: Quhairupoun my lord Aduocat aſkit inſtrumentis.

The Justice ffindis the Dittay relevant; and remittis the ſamyn to the tryell of ane Aſſyſe.

Assisa.

Robert Trumble of Huttrilburne, Johnne Trumble of Howdene, James Kene, bailzie of Selkirk, James Pringill in Tynneis.[1]

The perſewar, be his grit ayth, ſwore the Dittay to be of verritie: Quhairupoun my lord Aduocat aſkit inſtrumentis. And in reſpect thairof, and of the Chirurganes Teſtimoniall producet, with the evidence of the mutilatioun, be ſchawing of the perſewaris mutilat fingeris, Proteſtis for Wilfull Errour, gif the Aſſyſe acquit.—The pannell repeittis the allegeances maid be him of beſoir, now to the Aſſyſe, ſpeciallie, that pairt thairof, that the cryme was committit in his awin defence, and that he was perſewit be the perſewar, and is convict thairof, and of the bluid and bluid-wyte, as the Rolment of Court beiris.

Verdict. The Aſſyſe, be the mouth and declaratioun of James Wauch in Selkirk, chanceller, ffand the ſaid Walter Scott to be ffylet, culpable, and convict of the mutilatioun of the ſaid Adam of thre fingeris of his ſaid left hand, in manner and at the tyme ſpecifeit in the ſaid Dittay.

The Justice, in reſpect of the former convictioun, Ordanit the pannell to find caution for his compeirance befoir the Juſtice or his deputis, in the Tolbuth of Edinburgh, the ellevint day of November inſtant, to heir ſic Dome and pwneiſchment to be inflictit vpone him for the ſaid cryme, as ſall be inioynet be

[1] The rest of the Assise were persons of no note.

the Lordis of Secreit Counſall: And that he onnawayis depairt furth of the burgh of Edinburgh, in the meane tyme; vnder the pane of ffyve thowſeand merkis money.—George Scott of Caſtelſyde, Robert Scott of Hertwoidmyres, Walter Scott in Loquharret, and Williame Mitchelhill, burges of Selkirk, become cautioneris and ſouerteis, &c.

Nov. 11.—CONTINUED to the xiij day of Januar nixt.

(Jan. 13, 1619.)—THE JUSTICE, of conſent of Adame Dalgleiſche, perſewer, continewis the pronunceing of Dome, to the tent day of Februar nixtocum.

(Feb. 11.)—THE dyett DESERTIT, be directioun of the Theſaurer for the Kingis pairt; in reſpect the pairteis ar agreit be my Lord of Balcleuches Decreit gevin thairin, to quhome the matter was ſubmittit.

Slaughter.

Nov. 11.—GAWIN NISBET, ſone to Robert Niſbet of Dalzell, and James Scott in Ardblairis.

Dilaitit of airt and pairt of the Slauchter of vmq^le James Hammiltoun in Brigbrae; committit at ane Oiſler-hous, callit the Woman-hill, in the moneth of . . . ., 1617.

PERSEWAR, Robert Hammiltoun, as brother.

THE Juſtice, of conſent of aither pairtie, continewis this dyet to the thrid day of the air (of Lanerk), or ſoner, vpone xv dayis wairning, &c.

[*Mr Alexander Coluile.*]

Cutting and Carrying away of Growing Timber.

Nov. 18.—DAUID SPALDING of Eſſintullie, and Alexander Robertſone of Myddill Downie.

Dilaitit of airt and pairt of the cutting down of certane grit growand treyis, and away-taking thairof, furth of Johnne Erle of Mar his Forreſtis and woidis, within the boundis of Braemar, Cromar, Strathdie, and Glengarie.

In reſpect of thair compeirance, offerit thame ſelffis to the tryell of the Law, as altogidder innocent thairof; and proteſtit for thair cautioneris releif; and that thai ſould nocht be trubillit or charget for the ſaidis allegit crymes.

Slaughter.

Nov. 18.—JAMES MYDDILTOUN, ſone to Robert Myddiltoun, tailzeour, burges of Edinburghe.[1]

The ſamyn day compeirit perſonallie, in judgement, Robert Wynrahame, Herauld, and producet ane Supplicatioun, quhilk was gevin in to the Lordis of his Maieſteis Secreit Counſall, be James Myddiltoun, ſone to Robert Myddiltoun,

[1] See Aug. 26, 1612, where the whole particulars of the Trial are inserted.

tail3eour burges of Edinburghe, anent the ſaid James puting to libertie; togidder with the ſaidis Lordis of Secreit Counſall thair Warrand and delyuerance on the bak thairof. Off the quhilk Supplicatioun and delyuerance the tennour followis.

My Lordis of Secreit Counsall, vnto 3our lordſchipis humlie meanis and ſchawis I, 3our ſeruitour, *James Mydiltoun*, ſone lauchfull to vmq^le Robert Mydiltoun, tail3eour burges of Ed^r, That quhair, vpone occaſioun of that vnhappie accident of the ſlauchter of vmq^le *Clement Mauchane*, committit be me, I was takin, preſentit to juſtice, and convict for þe ſame, and the dome of death was pronuncet aganis me accoirdinglie thairfoir: And þe pairtie, from tyme to tyme, thir ſex 3eiris bygane, haiſing gevin eir to the offeris of Affythement,[1] quhilkis war by me and my freindis maid and offerit vnto thame; in end, by ſubmiſſioun of þe matter vnto 3our lordſchipis Sentence and Decreit, as gevin and pronuncet þairintill, quhairby I am decernit to be Banischet þe realmes of Scotland and Ingland, and ordanit never to returne agane within the ſame, without Licence and conſent of Sir Johnne Cokburne of Ormeſtoun, kny^t, Juſtice clerk, and Mr James Mauchane, brother to the ſaid vmq^le Clement Mauchane, firſt had and obtenit þairto, vnder the pane of deid, to be execute vpone me without fauour; conforme to þe Sentence and dome alreddie gevin and pronuncet aganis me in þis matter. Accoirding quhairvnto, I am maiſt willing to act my ſelff in þe buikis of Adiornall: In conſideratioun quhairof, I humblie beſeik 3our lordſchip to geve Warrand and command, heirby, to the Juſtice clerk and his deputis to tak me actit in the buikis of Adiornall, in maner and to the effect foirſaid, vnder þe pane aboue writtin: Quhairanent þir preſentis ſall be vnto þe Juſtice clerk and his deputis ane Warrand ſufficient: And 3our lordſchipis anſuer.

Apud Ed^r, xvij Nouembris, 1618, The Lordis Ordanis the Juſtice, Juſtice clerk, and his deputis, to appoint and ſet a Juſtice Court, and to tak þis ſupplicant actit in þe buikis of Adiornall, that he ſall depairt furth of the realmes of Scotland and England, within þe ſpace of ane moneth eſtir þe dait heirof; and returne (nocht) agane within þis realme, vnder the pane of deid: And he haiſing actit him ſelff, as ſaid is, Ordanis þe ſaid Juſtice to cans put him to libertie: And Ordanis this ſupplicant, that, during the tyme of his remaning within þis cuntrie, he hant[2] nocht Kirk nor mercat, and that he weir nocht a ſwoird.

Al. Cancell^s. Sanctandrois. Lauderdaill. Carnagy. J. Prymrois.

And accoirding to the ſaid Warrand, the ſaid Robert Wynrahame deſyret my Lord Juſtice to tak the ſaid James Mydiltoun actit; lyk as, the ſaid James Mydiltoun, immediatlie thaireftir, being, be directioun of the Juſtice, brocht furth of waird be George Foulis, his Maieſteis Maiſter Cun3eour,[3] and ane of the preſent Bailleis of Edinburghe, and preſentit vpone pannell, conforme to the foirſaid Supplicatioun and Warrand on the bak thairof, maiſt willinglie become actit, bund, and obleiſt, that he ſall depairt and paſs of the realmes of Scotland and Ingland, within the ſpace of ane moneth, &c.[4] Quhairvnto my Lord Juſtice interponet his authoritie and Decreit: And in reſpect of the former Act, and for obedience of the ſaid Warrand, Ordanis the ſaid James Mydiltoun to be fred and

[1] A compensation or *solatium*, by way of fine, paid to the relations of the murdered party. [2] Haunt; frequent. [3] Coiner; Master of the Mint. This officer (George Foulis of Ravelston) was the son-in-law and successor of George Bannatyne, the far-famed Compiler of the greatest body of Ancient Scotish Poetry now extant; in honour of whom the Literary Association, termed the Bannatyne Club, assumed his name. [4] As above narrated.

relevit furth of the ſaid Tolbuth and waird of Edinburghe be the Proveiſt and bailleis of Edinburghe.

The ſaid James Mydiltoun, *olim in carcere*, and now at libertie furth of waird, Ratifeis, approves, and affirmes the Band maid and ſubſcryuit be him and his freindis, anent his Baniſchment, &c., and payment of the ſowmes of money thairin contenit, &c.

Slaughter.

Nov. 20.—PATRICK HEROUN of Kierochtrie.

Dilaitit of airt and pairt of the Slauchter of vmq^le Robert Gordoun of Bairnairny; committit within the duelling hous of Andro McDowell, mercheand in Monygof, in the moneth of September laſt.

PERSEWAR, Alexander Gordoun of Barnernie, eldeſt ſone.

The pannell proteſtis for his cautioneris releif; and offeris him ſelf to the tryell of the Law, for the ſaid allegit cryme, quhairof he is altogidder innocent; diſaſſenting to all maner of continuatioun.

THE Juſtice Continewis this dyet, of the perſeweris conſent and deſyre, to the thrid day of the nixt Juſtice-air of the ſcherefdome quhair the pannell duellis, (Wigtoun,) or ſoner, vpone xv dayis wairning. And ordanis cautioun to be ffund be him for his entrie to that effect, vnder the panes contenit in the Actis of Parliament: Quha fund Sir Patrick M^ckie of Larg cautioun for his entrie, &c.

Usurping King's Authority, by taking Captive and Detaining, &c.

Nov. 20.—THOMAS MELDRUM of Idene;[1] Walter Grant, his ſervand; James Grant in Tilliebo; Johnne Roiſe, ſervand to the ſaid Thomas.

Dilaitit for taking and apprehending of Johnne Meldrum of Ordley captiue and priſſoner, furth of his duelling houſe of Ordley, vpone the viij day of Maij, 1612 yeiris, vnder nycht; cayreit him to the ſaid Thomas duelling hous of Idene, quhairin he was detenit, *in privato carcere*, be the ſpace of foure dayis and foure nychtis; and thairfra, cayreit him to Sir Alexander Gordoun of Clwneis hous, quhair he was detenit, *in privato carcere*, the ſpace of tua dayis and tua nychtis; and thairfra brocht him, as ane captiue, all the way to the burgh of Edinburghe, to the duelling hous of Alexander Watſone, quhairin he was detenit, *in privato carcere*, as ane priſſoner, the ſpace of xxiiij houris: Vſurpeand thairby his Maieſteis authoritie vpone thame, in taking and detening of the ſaid Johnne, *in privato carcere*, but[2] Commiſſioun or authoritie, be the ſpaces foirſaid.

PERSEWARIS, Johnne Meldrum of Ordley; Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolſone, elder.

[1] See Jan. 9, 1618. [2] Without.

It is allegit be the pannell, that na proces can be grantit at Johnne Meldrumis inſtance, becaus he is rebell and at his Maieſteis horne; and producet fyve ſeuerall Hoirningis for verifeing thairof.—My lord Aduocat declairis he inſiſtis in the perſute for the Kingis Maieſteis intreis aganis the pannell, quha had na power to tak and detene the ſaid Johnne, in maner lybellit.

It is allegit be the pannell, that gif the Dittay war trew, (nocht grantand the ſamyn,) that thai did na wrang in taking and detening of the ſaid Johnne Meldrum, becaus the tyme of his taking, he was rebell and at the horne; and repeittis the Hoirningis producet for inſtructing thairof: And as the pannell could nocht be callit for Slauchter of ane rebell at that tyme, far les can thai be perſewit for his taking.—It is anſuerit be my lord Aduocat, as perſewer, that the exception aucht to be repellit; *ffirſt*, becaus he inſiſtis vpone the haill lybell *coninnctim*, as ane cryme to infer the concluſioun thairin contenit, viz. taking and detening of Johnne Meldrum *in privato carcere*, as the lybell beiris: *Secundo*, adheirand to the firſt anſuer, geveand[1] the ſaid Johnne had bene rebell, the pannell had na Warrand to tak or apprehend him, thay nor nane of thame being Magiſtrattis, haifand na Juriſdictioun, power, nor commiſſioun; ſeing the pannell could nevir haif bene accuſet for ſuffering a rebell to pas vp and doun the cuntrie, nather war thay aſtrictit of the Law[2] to tak him, nather mycht thay tak him.

It is duplyit be the pannell, that the exceptioun ſtandis relevant, nochtwithſtanding of the anſuer, inſafar as the Kingis Maieſteis rebell can haif na benifeit of his Maieſteis Lawis; and thairfoir, as nocht being the Kingis frie leige, it was lauchfull to the pannell to tak him; and in the Law it is cleir, *quod capere Bannitum vnicuique permittitur*, L. finali Cod. *de Maleficis et Machematicis;* Baldus in Lege prima, Cod. *de Summa Trinitate:* And the reſſone of the Law is, *quia Bannitus habetur pro fugitivo; et fugitivum quilibet poteſt capere;* Bald. in Lege *qui bonis*, Cod. *qui bonis cedere:* And it was nevir practizet in this Judicatorie, that Hoirning being obiectit and producet, ather for hurting, ſlaying, or taking of ony man, proces was grantit. And it being now opponit, that the perſone tane was the Kingis Rebell, the pairtie perſewit was nevir, nor can nevir be put to the knawlege of ane Aſſyſe. Lykas, it is allegit, that *the Laird of Drumlangrig*, being accuſet for taking of *Kirkmichell*, was nocht put to ane Aſſyſe. It is forder eikit to the allegeance, that the pannell had ane ſpeciall intreis to tak him, becaus he was rebell and at the horne for nocht removeing fra his landis of Woidheid, quhilkis landis of Woidheid he violentlie poſſeſſit, and oppreſt the tennentis. Lyk as, the ſaid Thomas Meldrum of Iden, finding the ſaid Johnne Meldrum to be nyne or ten tymes his Maieſteis rebell, and haifing letteris of Captioun to tak and apprehend him, the ſaid Johnne being

[1] Giving or granting, for the sake of argument. [2] Bound by law.

ane fugitiue and ane howlat,[1] nocht appeirand in the day; and it being cum to the pannellis knawlege, the tyme lybellit, that he was cum, vnder ſilence of nycht, and enterit within the houſſis, the pannell, vpon ſuddantie, being adverteiſt by the ſpyis, nocht haiſing the occaſioun[2] of ane meſſinger, was forcet of neceſſitie, *propter periculum fuge*, to pas him ſelf, with his awin domeſtik ſervandis, and to ſeaſe vpone the ſaid Johnne, of intentioun to exhibeit him to Juſtice, he being his Maieſteis rebell for cauſſes Criminall, ſic as for invaiding *the Guidman of Harthill*, &c., as the Hoirningis beiris: Lyk as, with all convenient dilligence, the pannell brocht the ſaid Johnne Meldrum to Edinburghe, of intentioun to exhibeit him to juſtice; and in the meane tyme, he being ſeaſit vpone and put in waird, at the inſtance of dyuerſe perſones, baith for dett, ryottis, and oppreſſiones. Quhair-vpone the pannell meanit him ſelff[3] to the Lordis of Secreit Counſell; quha, be thair Warrand and directioun, vpone the xxj of Maij, 1612, Ordanit the ſaid cautioun for obſerveing his Maieſteis peace, and his perſonall compeirance, quhan euir he ſould be charget thairto, vnder the pane of V^m^ (5000) merkis, as the Ordinance, heirwith producet, beiris. Sua that the pannell, being *in proſecutione proprie injurie*, for freithing[4] him ſelff and his tennentis of ane manifeſt oppreſſour, *et quum latitabat tanquam fugitivus*, as ſaid is, he was *in optima fide* to tak him; and nather the captor nor detentioun can be comptit criminall, becaus it is lauchfull, *cuilibet ex populo*, to tak ane notorious malefactour, and to exhibeit him to juſtice; and his detentioun is nocht *culpa*, becaus he was preſentit to juſtice.

It is anſuerit be my lord Aduocat to the firſt pairt of the Duply, that he repeitis his former anſuer; for albeit ane rebell may nather perſew nor defend in judgement, that is na reaſone quhairfoir everie privat man ſould tak him at his awin hand, and detene him in his privat hous, as is ſet doun in the lybell. Quhair the defender wald compair ane rebell *cum bannito*, nocht grantand to the Law allegit, quhilk makis na mentioun *de Bannito*, ffor *Bannitus* was properlie callit he quha tranſgreſſit aganis the Empyre or the Eſtait. As to the allegeance proponit aganis all the perſeweris rebelliones, thair is nocht ane proponit for ane criminall cauſe perſewit criminallie; and as to the haill ciuile Hoirningis, repeittis as of befoir. And quhair it is allegit, that he was rebell at the inſtance of Thomas Meldrum him ſelff, ane of the pannell, for nocht removeing fra his landis of Woidheid, it is anſuerit, that albeit he was pairtie aganis him, that gave him na authoritie to tak him at his awin hand, ſpeciallie being duelling and remaning in his awin hous, and vpone his awin heritage of Ordley, and nawayis being fugitiue fra his Maieſteis lawis at that tyme. As to the Hoirning vſet aganis him, at the inſtance of his Maieſteis Aduocat for the tyme, the Guidman of Hearthill

[1] Owl. Such persons were likewise often termed *night-hawks*. [2] Opportunity; convenience.
[3] Made suit; complained. [4] Freeing; ridding.

and his bairnis, is na Criminall Hoirning, becaufe it proceidis frome ane perfute agitat afoir the Counfell; and fforder, to purge that Hoirning, he was relaxt thairfra, lang ofbefoir, viz. in *anno* 1609. As to the Letteris of Captioun producet, na refpect fould be had thairto, becaus thair is an executioun producet, quhairupoun I tak inftrumentis, defyreing the haill blankis thairintill to be fcoirit; and allegis, that na refpect fould be had thairto, becaus the Letteris of Captioun ar nocht direct to him, nor to nane of the perfones that concurret with him in the taking of the faid Johnne Meldrum: Lyk as, na refpect aucht to be had to the faidis Letteris of Captioun, becaus thair is na executioun producet. As to the Warrand of the Secreit Counfell, producet, the perfewar acceptis the famyn, and alledges that this Warrand, gevin vpone the xxj of Maij, 1612, could be na Warrand to the perfones on pannell, nor nane of thame, to haif tane him vpone the aucht day of Maij preceiding, and to haif keipit him *in privatis carceribus* to the faid xxj day, *quum carcer eft meri imperij, et non competit privato;* and ane Ordiner Judge hes nocht power to keip ane perfone tane *in privato domo* attour[1] the fpace of xxiiij houris. Sua, infiftand vpone the haill lybell coniunctlie, as is confauet, the haill argumentis proponit for the pannell aucht to be repellit.

It is forder exceptit be the pannell, that with the Hoirningis producet, and allegeances foundit vpone the rebellioun of the perfewar, the defender did na wrang to tak or detene the perfewar, for the reffones foirfaidis. And quhair it is allegit, that he mycht nocht detene him, *quia carcer eft meri imperii; ffirft*, it is allegit, that quhan ane rebell is tane *ad hunc finem*, to prefent him to the Judge Ordiner, thair is na wrang done, quhilk is in this caice; as is decydit in the Law laitlie allegit, *quod ait Pretor, Si debitorum* ff. Digeft. *que in fraudem creditorum:* And thairfoir, feing the defender tuik the perfewer, being ane rebell, and detenit him quhill[2] he brocht him to the fait of Juftice, and thair prefentit him, thair can be na vfurpatioun of the Kingis authoritie: And as for the fpace of detentioun, it may be langer or fchorter, accoirding to the diftance of the place; as is cleir in Julius Clarus, L. quinta § finali, *fi captus, et aliquis poteft illum detinere, et captum Judici prefentare, etiam poft feptem dies.* And the fame Clarus fchawis, quhair it was practizet contra Dominum Joannem Stephanum, *qui furem feptem dies detinuit, &c. fed cum compertum fuerit, quod Judici et officialis obtulerit, abfolutus fuerit.—Secundo*, it is nocht capitall, bot the gritteft pane that is inflictit is, *tot dies manere in carcere publico, quot illum in privato incluferit:* ffor albeit Lex vnica, Cod. *de privato carcere*, appointis it *penam maieftatis*, yit it is mendit be the nixt Conftitutioun immediatlie thaireftir following, quhilk appointis the pane foirfaid. Ita Cujacius, &c.: And, gif neid beis, fall be provin be the confuetude of all Nationes; and gif *privati*

[1] More than; above. [2] Until.

carceres (quhairin thay ar done be manifeſt vſurpatioun) ar nocht capitall, *multo minus* can the pannell fall under ony corporall pwneiſchment, haiſing tane ane manifeſt oppreſſour, and preſenting him to Juſtice. *Laſt*, as to the Relaxatioun fra *Harthillis* Hoirning, it is null, becaus the Kingis Aduocat and the pairtie is thairintill ordanit to be ſummond, quhilk is nocht done.

My lord Aduocat, anſuerand to the ffirſt pairt of the ſecund allegeance, ſayis, that the perſewer is formallie contrair to the pannell, and that the lybell contenis ane ſufficient Criminall caus, to put the pannell to the knawlege of ane Aſſyſe: And quhair it is allegit, that the pannell brocht the perſewer and preſentit him to ane Judge, deſyres the pannell to condiſcend vpone the name of the Judge to quhome he was preſentit; ffor it is treuthe, that quhan he was brocht to Ed[r], he brocht him to the calſay,[1] and than tuik inſtrumentis of his ſetting to libertie; and thairefter, certane of his creditouris, be vertew of Captioun, tuik him and pat him in waird. And quhan it is allegit that the taking of perſones and keiping of thame in *privatis carceribus* is nocht capitall, the direct contrair is of verritie; becaus the ſaid cryme is nocht only capitall, bot, be the rigour of the Law, is treſſonable; as was decydit befoir the Juſtice General aganis *the Erles of Huntlie* and *Crafurd*, ffor taking of *the Maiſter of Glames*. As to the practique of *the Laird of Drumlanrig*, in that caice it was alleget, for defence of *Drumlangrig*, that *Kirkmichell* was tane be vertew of Letteris of Captioun, direct to *the Schereff of Nidiſdaill*, and na Interlocutour was pronuncet in that cauſe, becaus the perſewar paſt fra the perſute thairof, *pro loco et tempore*. In reſpect quhairof, the lybell ſtandis relevant; and, nochtwithſtanding of the ſaidis allegeances maid be the pannell in the contrair, ſould be put to the knawlege of ane Aſſyſe.

THE JUSTICE continewis his Interlocutour to the thrid day of the nixt Juſtice-air of the ſcherefdome of Aberdene, or ſoner, vpone xv dayis wairning.—Patrik Meldrum ffiear of Iden become ſouertie for the entrie of the ſaidis Thomas Meldrum of Iden, his father.

Slaughter—Horse-stealing.

Nov. 20.—JOHNNE MELDRUM of Ordley.

Dilaitit of airt and pairt of the Slauchter of vmq[le] Criſtian Watſone, ſpous to Alexander Bythe ſumtyme in Scottiſtoun, in manner ſpecifeit in the Letteris; committit in Marche 1614: And for airt and pairt of the Steilling of tua horſis fra Thomas Meldrum of Idene; committit in September, 1608.

PERSEWARIS, Alexander Bythe, as ſpous; Thomas Meldrum of Idene; Sir Williame Oliphant, kny[t].
PRELOCUTOUR in defence, Mr Vmphra Blindſchellis, (Advocate.)

[1] Causeway; the paved public streets within the gates.

The Justice continewis this dyet, for tryell of baithe the crymes aboue written, to the thrid day of the nixt Juſtice-air of the Sherefdome of Abirdene, &c.—Mr Williame Levingſtoune become ſouertie, &c.

Slaughter—Demembration.

Dec. 4.—Williame Stewart, at the mylne of Dalcrove.

Dilaitit of airt and pairt of the Slauchter of vmq^le Dauid Toſcheoche, younger of Monyvaird, and of airt and pairt of the Demembring of Dauid Malloche, his ſerwand, of his rycht hand; and remanent crymes contenit in the Letteris; committit the 24 of Junij laſt, within the burgh of Perthe.[1]

Compeirit Hew Campbell *excuſatorio nomine* for *Annas Grahame Lady Monyvaird*, and producet the Letteris deulie execute and indorſate, togidder with ane Teſtimoniall, ſubſcryuit be the ſaid Annas, and be Mr Johnne Menteith Minister at Monzie, and Mr Dauid Drummond Miniſter at Creiff, teſtifeing the ſaid Annas Grahame to be newlie delyuerit of hir birth; and thairthrow, vnhable to travell to the keiping of this dyet and perſute of the ſaid Williame Stewart for the ſaid cryme: And in reſpect thairof, proteſtit for releif of the Lairdis of Laweris and Inchebrakie, cautioneris for repoirting and perſute of the ſaidis Letteris.

The Justice continewis the dyet to the thrid day of the nixt Juſtice-air of the Scherefdome of Perthe, or ſoner, vpone xv dayis wairning; and ordanis the pannell to find cautioun for his re-entrie. *Plegio, Waltero Stewart de Heildoun.*

Persewar, Dauid Malloche, ſumtyme ſervand to vmq^le Dauid Toſcheoche.

(Feb. 25, 1620.)—The perſewer declaris, that at the tyme of the raiſing of the Letteris aganis the pannell, informatioun was gevin to him that the ſaid Wm Stewart was in companie with Laurence Bruce of Cultmalundie, Alexander Flemyng of Moneſs, Alexander Bruce, and remanent perſones thair complices, at the away-ſtreking of his hand; bot ſenſyne, he hes tryit[2] that he is altogidder innocent thairof, nather was he vpone the grund at the committing of that fact: In reſpect quhairof, he paſſis *ſimpliciter* fra the ſaid Williame his perſute.

Continued to the air of Perthe, tertio Itineris, or ſoner, vpone xv dayis wairning. Thomas Layng, indueller in Leyth, cautioner.

Slaughter.

Dec. 9.—Robert Campbell, ſone to Colene Campbell, burges of Gleſgow.

Persewaris, Thomas Symſoun at the Waſt-poirt of Edinburghe, as brother to the defunct; Sir Williame Oliphant of Newtoun, kny^t.

[1] See this Collection, Jul. 29, 1618, and Nov. 17, 1619. [2] Proved; ascertained.

The pannell takis inſtrumentis of his entrie, and offerris him ſelff to the tryell of the Law for the ſaid allegit cryme; affirmeing him ſelff to be altogidder innocent thairof; and diſaſſentis to all forder continuatioun, in reſpect that, to the keiping of that dyet, and cleiring of his innocencie of the allegit Slauchter aboue writtin, being out of the cuntrie this threttene moneth bygane, he being maid foirſene[1] thairof, be Letteris direct to him, and reſſauit be him in *Spane*, he hes cum furth of *Spayne*, and left his affairs thair vnperfyttit, haiſing na vther errand to returne hame bot to cleir him ſelff of ſic ane haynous imputatioun; quhairof he is innocent.

Interlocutor. The Juſtice continewis this matter, and all tryell to be tane thairintill, to the thrid day of the air (Renfrew), or ſoner, vpone xv dayis wairning; and Ordanis the pannell to find cautioun for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament: Diſchargeing in the meane tyme all letteris to be direct aganis him or his cautioner, except he be reſident within the cuntrie for the tyme, nocht vpone the poynt of his voyadge; nather that ony Letteris be direct in the tyme of wynter: And declaris, that in caice he be charged vpone the poynt of his voyadge, for his compeirance vpone a fyftene dayis thaireftir, in caice at the day of compeirance it be allegit be his cautioner that he could nocht guidlie enter him, becaus he was boun[2] to his voyadge furth of the cuntrie the tyme of the geving of the charge, reſpect and conſideratioun ſall be had to the ſaid allegeance, the ſamyn being lauchfullie verifeit and provin to be of veritie: And laſt, the Juſtice Diſcharges the haill perſones ſummoned vpone this Aſſyſe fra all compeirance herein in tyme cuming, in reſpect this is the ſecund dyet keipit be thame, and nathing is done thairintill, &c.

[Curia *Juſticiarie ſ. d. n. Regis, tenta in pretorio de Edinburghe, per M. Patricium Sandis, Juſticiarium ſ. d. n. Regis, hac in parte, virtute Commiſſionis Dominorum Secreti Conſilij.*]

Slaughter.

Jan. 15, 1619.—Andro Waſt, maſone burges of Dundie.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Alexander Tailzeour, his prenteis, be throwing ane four-futtit ſtule at his breiſt and heart, and geving him ane deidlie ſtraik thairwith; committit within his awin duelling hous, in Dundie, in the moneth of Januar, 1611; quhairof he deceiſt, in Februar thaireftir, being cayreit fra Dundie to his fatheris hous in Elgyn, in ane horſe-litter, in grit dollour and payne, quhair he deceiſſit of the ſaid deidlie hurt.

Perſewaris, Johnne Tailzeour, maſone burges of Elgyn, as father; Sir W. Oliphant of Newtoun, kny^t^
Prelocutour in defence, Mr Alexander Peiblis.

It is allegit be the pannell, that the Dittay, as it is qualifeit, is nawayis relevant to pas to ane Aſſyſe; becaus it is cleir, be the Dittay, that eftir the allegit ſtraik gevin to the defunct with the ſtule lybellit, he travellit the ſpace of fourſcoir myles frome Dundie to Elgyn; quha, eftir his coming to Elgyn, be the exces of travell, he contractit ane fever, quhairof he deceiſt.—It is anſuerit be my lord Aduocat, that the allegeance aucht to be repellit, in reſpect of the Dittay beiring the defunct to haif reſſauit ane deidlie ſtraik, quhilk was the cauſe of his daithe.

[1] Acquainted. [2] Prepared; furnished; equipped.

The Justice ffindis the Dittay relevant; and Ordanis the ſamyn to be tryit be ane Aſſyſe.

The Aduocat takis inſtrumentis of the ſueiring of the Aſſyſe; and thaireftir declairit, that ſeing they ar all induelleris in Dundie, to quhome the treuth of this matter was beſt knawin; and that the defunct reſſauit ane deidlie ſtraik, quhairof he deceiſt, proteſtis for Wilfull Errour, gif thay acquit.—The pannell proteſtit in the contrair, affirmeing that the Defunct paſt haill and feir[1] furth of Dundie to Elgyn, and travellit lxxx myles thaireftir, vpone fute.

Verdict. The Aſſyſe, be the repoirt and declaratioun of Robert Moreiſe, merchand in Dundie, chanceller, ffand, pronuncet, and declairit, all in ane voce, the ſaid Andro Waſt to be Clene, innocent, and acquit of the ſaid crewall Slauchter.

Slaughter—Proof in exculpation, by Witnesses, refused.

Jan. 15.—James Scrymgeour in Balquhadlie.

Dilaitit of airt and pairt of the Slauchter of vinq^le^ Johnne Eduard in Acharne, be ſtreking him ane deidlie ſtraik in the heid, in September 1617; quhairof he deceiſſit in Januar thaireftir.

Persewaris, Johnne Eduard, as ſone; Dauid Eduard, as brother; Sir W. Oliphant, kny^t^.

Preloquitouris for the pannell, Mr Thomas Hoip, Mr William Oliphant, younger.

It is allegit be the pannell and his prelocutouris, that the Dittay is nawayis relevant to pas to ane Aſſyſe, nather in the diſtinct memberis nor *conjunctim;* nather can ony Homiceid be tryit or pwneiſt, except the ſamyn proceid vpone ffoirthocht ffellony. As to that member of the Dittay, beiring the defunct to haif bene beſt and dung with ane rung,[2] *non relevat* to infer ane cryme. *Secundo,* as to that article thairof, quhair the pannell haket his heid with ane quhinger,[3] (nocht granting the ſamyn,) it is na capitall cryme, bot ane ryote; the tryell quhairof pertenis to the Counſell. *Tertio,* quhair it is allegit, that he was ſtrukin to the grund, and hurt in his nobill pairtis, *non relevat,* vnles the perſewar condiſcend quhat intrallis or noble pairtis was brokin. *Quarto,* as to that point of the lybell, quhilk is the chiefeſt member, beiring, that be occaſioun of the haill ſtraikis preceiding, he dwynet and pynet away to the tyme of his daith, *nullo modo relevat,* vnles he ſay *poſitiue,* that he deceiſt be thais ſtraikis; *nam non dici poteſt prebere occaſionem mortis, niſi ſit cauſa mortis.*—It is anſuerit be my lord Aduocat, that the allegeance foirſaid aucht to be repellit, in reſpect of the lybell beirand, that the defunct deceiſt of the ſtraikis lybellit.

It is forder allegit be the pannell, that the Dittay, as it is mendit, is nawayis relevant; becaus the preceiding qualificatioun can nocht be eſtemit *cauſam mortis,* except it war lybellit, that the defunct, immediatlie eftir the allegit ſtraikis, he

[1] Whole and sound, or hearty. [2] Basted and violently struck with a cudgel or heavy staff.
[3] Hacked or *notched* his head with a sort of hanger or short sword.

fell doun in found[1] to the grund; or ellis, that be the ſtraikis he contractit a deidlie diſeaſe and lay bedfaſt, ather immediatlie eftir the ſtraikis to be the caus of a ſupervenient diſeis; ffor be the cowmoun conſent of all Laweris, *vulnus non dicitur cauſa mortis, quando a die vulneris vſque ad vigeſimum primum diem nulla ſupervenit febris vulnerato.* Panormitanus, ad Cap. *preſbiterium, extra de Homicidium.* In the quhilk place, Panormitan and all the Canoniſtis conſentis, *quod hoc ſit judicium medicorum;* ffor if ony ffever had followit, gif he had convaleſſit thaireftir, the ffever falling out vpone the ſtraik was na cauſe of deathe; *multo magis* in this caice, na fever following vpone the allegit ſtraik gevin. In reſpect quhairof, the Dittay is nawayis relevant, *hoc autento maxime,* that in the Dittay it is confeſt, that the perſone ſlane was threſcoir ten yeiris of age, ſa that it was nocht poſſible to him to reſſaue deidlie woundis, and to leave in h ealth ſa ang but[2] ſeiknes.

It is anſuerit be the perſewaris, that the allegance aucht to be repellit, in reſpect of the Dittay beiring deidlie woundis, in maner qualifeit in the Dittay; and that he dwynet and continewit in grit pane to the tyme of his deceis.

It is duplyit be the pannell, that my lord Aduocattis reply is only in reſpect of the laſt member; and thairfoir the vther tua, as nocht relevant, ſould be ſcoiret out of the Summondis.

My lord Aduocat declairis, he inſiſtis vpone the Dittay *conjunctim,* as it is conſauet.—The pannell allegit in the contrair, that it can nocht be conjoynet.—It is allegit *peremptorie* be the pannell, that it can nocht be affirmet that *Johnne Eduard* deit of the allegit ſtraikis, in reſpect of the lybell, quhilk beiris, that he levit be the ſpace of foure monethis (albeit, *in rei veritate,* he levit quhill a thre dayis befoir Faſtreniſevin,[3] quhilk was the 18 of Februar): becaus *ſecundum ſententiam omnium medicorum, nullus lethaliter vulneratus poteſt vivere vltra quadraginta dies.* Jul. Clarus ad § Homicidium, vbi ſubdit, *quod ita obſervat communis ſtilus, et ſi vulneratus poſt illatum vulnus ambulaverit, non preſumitur deceſſiſſe ex vulnere.* Lege vnica, Cod. *de Emendatione ſervorum.* Bartol. ad Legem finalem, ff. *ſicarijs,* particulo preterea extra *de Clerico percuſſore.* Pharmacius *de Homicidio,* Tit. 14, queſt. 125, num. 46, vbi teſtatur de communi medicorum opinione, *Vulneratum qui vltra quadraginta dies vitam porrigit, non preſumitur ex vulnere deceſſiſſe.* And be all thair conſentis, gif the pairtie nocht onlie leave,[4] bot alſo gif he leave in healthe, without ſeiknes, and walk vp and doun in healthe, as ane haill man, the ſpace of thre dayis, it is accoirdit, that the wound can nocht be the cauſe of daithe: And the grund[5] of this is tane out of the law of Moyſes, Exod. cap. 21, ver. 21. Off the quhilkis it is ſubſumet, nocht onlie that the defunct levit fourtie dayis, bot neir-hand foure tymes fourtie

[1] In a swoon or fainting fit. [2] To live, in health, so long without sickness. [3] Fasten's-eve; the day before the commencement of Lent. [4] Live; survive. [5] Ground; warrant.

dayis, ffor he deit vpone the 16 or 17 of ffebruar 1618: During the quhilk tyme, he was nocht onlie frie of ſeiknes, nor nevir lay bedfaſt, except in the ordiner tyme of reſt, in the nycht; bot alſo, he walkit vp and doun the cuntrie and parrochines about, as ane haill man, and nevir tuik bed quhill aucht dayis befoir his deceis, at quhilk tyme he was tane with ane fever, quhairof baith he and his wyfe deceiſſit.—Nather can the accuſer, quhilk is the defunctis ſone, be hard to allege in the contrair; becaus, at Martimes thaireftir, he forcet his father out of his awin hous; and the particuleris of this exceptioun the pannell offeris to prove be Witneſſes, quha are ſummond be the Lordis delyuerance: Quhilkis Letteris, proceiding vpone the ſaid delyuerance, thay produce, and deſyres that the Witneſſes may be callit and admittit thairupoune. *Laſt*, the lybell can nocht be ſuſtenit *ad hunc effectum*, to pwneis the pannell to death, becaus *nullum Homicidium morte punitur, niſi homicidium doloſum et deliberatum ſive ex felonia; aut culpoſum vel caſuale non puniuntur ad mortem.* And for proveing of this propoſitioun, the pannell cites the third Parliament of King James the ffirſt, cap. 51, Quhair the Eſtaitis diſtinguiſches betuix Slauchter of ſuddentie, and Slauchter of ffoirthocht ffellonie; and declairis ffellonie to be pwneiſt be death; bot the vther, that the pairtie ſkaithed ſall follow, and the pairtie treſpaſſand defend, accoirding to the courſe of the auld Lawis of this cuntrie: And ſiclyk, in the 6 Parliament of King James the ffirſt, cap. 95, quhilk contenis the ſame diſtinctioun, and cloſes this article, that gif it be ffoirthocht ffellonie, he ſall die thairfoir. Vpone the quhilkis it is ſubſumet, that it was nevir lybellit, nor can be lybellit, that this Slauchter was committit vpone ffoirthocht ffellonie; bot be the contrair it is trew, that quhateuir the pannell did, he did it as maiſter to Findlay Ramſay and vmq[le] Johnne Eduard, being baith his tennentis, *et ſic dans operam rei licite;* in ſa far as Johnne Eduard, being decernit in Court, in Junij 1617, of his awin conſent to haif done wrang in teilling and ſawing[1] of ane peice of land pertening to the ſaid Finlay Ramſay; and be the Act of Court, the officer was ordanit to pas the tyme of ſchering, and ſcheir and leid the coirnes, as ſawin vpone Finlay Ramſayis grund; lyk as, the ſaidis coirnis war arreiſtit be the officer, vpone the ſext of Junij 1617; and thaireftir, in the tyme of ſcheiring, the ſaid officer haifing paſt to the grundis, and ſchorne the coirnes, and being leiding the ſamyn away, the ſaid Johnne Edward cam maiſt proudlie and contemptuouſlie (his maiſter being vpon the grund), and defoircet the officer in his preſens; quhairupone the officer brak his wand:[2] Lyk as, the defunct being commandit be his maiſter to deſiſt, he maiſt proudlie repynet contrair his Maieſteis lawis; and the pannell being preſent, haifing ane littill ſtalff in his hand, ſtrak the defunct thairwith vpone the heid, and did no forder; nochtwithſtanding quhairof,

[1] Tilling or ploughing, and sowing. [2] Broke his staff or wand of office, symbolical of his being *deforced*, as it was termed, *i. e.* violently and forcibly interrupted in the execution of his office.

the defunct proudlie cayreit away the coirnes to his awin ȝaird, walking ſoundlie vpone his feit, without ony appeirance of hurt. And for verifeing thairof, producet the deforcementis.

It is anſuerit be the perſewaris, to the firſt allegeance, proponit *peremptorié*, the ſamyn aucht to be repellit, in reſpect of the Dittay, Lawis and practique vniuerſallie obſeruit in this Judgment, and all vther Criminall Courtis within this realme, quhairin Dittayis ar evir fund relevant, and remitted to the knawlege of ane Inqueiſt, being lybellit and ſet doun in maner as this Dittay is lybellit; and that the perſone offendit deceiſſit throw the hurtis and woundis gevin to him: And quhair it is meanit,[1] that he ſurvivet efter the geting of the hurtis the ſpace of fyve monethis, that pairt is nawayis relevant mair nor was the firſt; in reſpect that the Dittay beiris, that the defunct was hurt and woundit vpone the nynt of September 1617, and he deceſſit thairof vpone the aucht or nynt of Januar thaireftir, 1618; quhilk Dittay beiris lykwayis, that he dwynet continuallie fra the tyme of his hurting to the hour of his daith.—Quhair it is allegit, that WITNESSES aucht to be reſſauit vpone this allegeance, anſueris, na Witneſſes can be reſſauit in Criminall cauſſis, conforme to the Lawis of this realme, except in matteris of Treſſone: And albeit Witneſſes mycht be reſſauit, yit thay can nocht be reſſauet vnto the tyme the allegeance be ffirſt ffund relevant; and gif it war ffund relevant, thair aucht na Witneſſes be reſſauit befoir the Aſſyſe, ſeing the haill poyntis conſiſtis *in facto*, and the tryell thairof is remittit to the Aſſyſe, quha becumis bayth tryeris and Witneſſes thairin:[2] And as to the Lordis deliuerance grantit for ſummonding the Witneſſes, it aucht nocht to be reſpectit, becaus it is privat, and grantit be the Lordis *parte non citata*. As to the laſt allegeance, beiring, that na man ſould be pwneiſt to the daithe, except it be done vpone ffoirthocht fellonie, the perſewer denyis that propoſitioun altogidder, in reſpect of the vniverſall practique of this realme; be the quhilk, all perſones criminallie perſewit for Slauchter ar put to the knawlege of ane Inquieſt, and pwneiſt to the daithe; this lybell contenand ane verrie relevant cauſe, qualifeit with all the circumſtances neceſſar aganis the pannell, as committer of the Slauchter, with all circumſtances of the Law requiſite.

It is duplyit, that Witneſſes may be examinat befoir the Aſſyſe, vpone the treuth of the exceptioune peremptour; and being remittit be the Judge, with the lybell, to the Inqueiſt, thay may cognoſce thairupoun, and vpone the Witneſſes Depoſitiones, ſa far as the ſamyn may geue thame licht concerning the fact: And be ſpeciall Act of Parliament, maid in his Maieſteis xj Parliament,

[1] Represented. Literally, complained. [2] For an elucidation of the ancient practice upon this point, reference is made to Mr Hume's valuable Commentaries on the Criminal Law of Scotland. The present case affords ample illustration of the doctrines held relative to the Law of Evidence, in matters Criminal, at the commencement of the Seventeenth Century.

cap. 90, it is ſtatute, that all writtis, Witneſſes, and other probatioun, ſall be led and deduced befoir the Aſſyſe, and that for tryell of the treuthe, *quia probationes in criminalibus debent eſſe luce meridiana clariores:* Lyk as, Witneſſes war admittit in the Criminall cauſe perſewit be *Strauchane* aganis *Geillis Johnneſtoune.* And quhair it is affirmet, that the Warrand is purcheſt for ſummonding of Witneſſes, *parte non citata,* it is nocht ane Warrand againſt juſtice, bot for fortherance of juſtice, and cleiring the treuthe. And as to the laſt, the ſamyn is foundit vpone tua Actis of Parliament, quhilk can nocht be derogat be ane contrair cuſtome; lykas, my lord Aduocat is nocht hable to ſchaw quhair this exceptioune, being proponit, was repellit.

Interlocutor *of Relevancy.*

The Juſtice Repellis the haill allegeance, in reſpect of the Dittay, and anſueris maid be my lord Aduocat in fortificatioun thairof. And Ordanis the Dittay, quhilk is ffund relevant, to pas to the knawlege of ane Aſſyſe.

Quhairupoun my lord Aduocat aſkit inſtrumentis.

The Juſtice, in reſpect thair is nocht ane number of ſubſtantious perſones, landit men, accoirding to the qualitie and rank of the defender, preſent, to pas vpone his Aſſyſe, Continewis all forder tryell of this matter to the thrid day of the nixt Juſtice-air of the ſcherefdome quhair the defender duellis, or ſoner, vpone fyftene dayis wairning: And ordanis the pannell to find cautioun for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament; with this reſtrictioun, that na Letteris be direct furth in this matter befoir the firſt day of Junij nixt.

Quhairvpone the ſaid James Scrymgeour, defender, aſkit inſtrumentis; and quha, for obedience of the ſaid Juſtice ordinance, ffand Johnne Scrymgeour of Ballanſcho cautioner, to the effect, and vnder the panes foirſaid.

[*Mr Patrik Sandis, Juſtice-Depute.*]

Slaughter committed at a Bridal.

Jan. 29.—Johnne Swyne, ſervand to the Laird of Randiefurd.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^le^ Johnne M^c^cairtour, ſervand for the tyme to Jonet Mayne, wedow, in Menſtrie, be ſtreking him with ane durk in the bellie, quhairof he deceiſſit; committit at ane brydell,[1] in the evening eftir ſupper, within the ſayd Jonet Maynes duelling-hous, vpone the xxij day of December laſt, being Tyſday befoir ȝule.[2]

Perſewar, Gilchryſt M^c^cairtour in Buttergaſk, as father.

The pannell confeſſis the cryme, and cravis Godis mercie and pardoun for the ſamyn.

Verdict. The Aſſyſe, all in ane voce, ffand, pronuncet, and declairit the ſaid

[1] Bridal (*bride-ale*), wedding. [2] Yule, or Christmas.

Johnne Swyne, conforme to his awin Judiciall Confeſſioun, to be ffylet, culpable, and convict of the ſaid Slauchter.—SENTENCE. To be tane to the Caſtell-hill of Edinburgh, and thair his heid to be ſtrukin frome his body; and all his moveabill guidis to be eſcheit, &c.

Child-Murder.

Jan. 29.—BESSIE WEIR, ſervand to James Lowrieſtone in Over Gogar.

Dilaitit of the crewall and vnnaturall Murthour of hir awin infant bairne, borne and brocht furth be hir, in fornicatioun, to James Threipland in Biggar; committit vpone the xx day of Januar inſtant, about midnicht, within ane ȝaird lyand to the ſaid James Lowrieſtones hous in Over Gogar, immediatlie eftir hir delyuerie thairof.

VERDICT. The Aſſyſe, all in ane voce, be the mouth and declaration of Robert Wilkie in Rathobyres, chanceller, in reſpect of the ſaid Beſſie hir Judiciall Confeſſioun of the ſaid cryme, ffand, pronuncet, and declairit her to be culpable and convict thairof.—SENTENCE. To be tane to the Caſtell-hill of Edinburgh, and thair hir heid to be ſtrukin frome hir body; and all hir guidis, gif ſcho ony hes, to be eſcheit, &c.

[*Mr Alexander Coluill, Juſtice-Depute.*]

Slaughter.

Feb. 3.—HABBIE RAE in Mouſwall, Pait M^c^keg, ſervitour to the Laird of Lag, and twenty others.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Johnne Carutheris, callit of Dormont; committit vpone the ſecund of Januar laſt, with ſchottis of hagbutis and piſtolettis, within the dwelling-hous of Johnne Mundallis in Torthorrell.

PERSEWARIS.

Margaret Johnneſtoun, as mother; Frances Carutheris, as brother; Sir Williame Oliphant of Newtoun, kny^t^.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr James Hammiltoune.

Continued to the Juſtice-air of Dumfries, 'tertio Itineris, vel ſuper premonitione xv dierum.'

Slaughter.

Feb. 3.—JAMES DOUGLAS of Mouſwall; Johnne and Williame Greirſones, his ſervandis; Johnne Carleill, ſone to Thomas C. in Bankis; Johnne Blak in Mouſwall; and Habbie Dikſone, thair.

Dilaitit for the above Slaughter. Theſe perſons were all 'denuncet rebellis, and put to the horne, for nocht finding of cautioun for thair perſonall compeirance.'

(Jul. 21.)—CONTINUED to the air of Dumfries, *tertio Itineris*, &c. Johnne Lord Fleming, cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

Slaughter.

Mar. 10.—Mr Thomas Douglas, Minister at Balmirrienoche.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Thomas Creichtoun of Bodumcraig; committit betuix Balmirrienoche and Couper in Fyfe, vpone the xiij day of Februar last, 1619.

The Justice, in respect of the seiknes of Jeane Carmelie, the defunctis relict, quha can nocht be present to concur in this persute, continewis this matter to the thrid day of the nixt Justice-air of the Scherefdome of Fyfe, or soner, vpone fyftene dayis wairning: And ordanis the pannell to find cautioun for his re-entrie; quha ffand James Douglas of Moirtoun, portioner of Gogar, &c.

Treasonable Murder under trust, credit, and assurance.

Apr. 2.—Johnne Maxwell of Garrarie, and George Maxwell, his sone.

Dilaitit of the crewall and odious Murthour under trust, credeit, and assureance, of vmq^le^ Johnne M^c^Kie of Glashak; committit vpone the viij day of Julij 1618; in forme and maner specifeit in the Dittay producet against thame, viz.

Dittay *against Johnne Maxwall of Garrarie, and George Maxwall, his sone.*

Forsamekill as, in the ellevint Parliament haldin by our souerane Lord and Estaittis of this kingdome, att the burgh of Ed^r^, the xxix day of Julij, 1587, cap. 51, it is statute and Ordanit, that the Murthour and Slauchter of quhatsumeuir his Maiesteis legis, quhair the pairtie slane is vnder the trust, credeit, assureance, and power of the slayer, all sic Murthour and Slauchter to be committit eftir the dait of the said Act, the samyn being lauchfullie tryed, and the persones dilaitit fund giltie thairof be ane Assyse, sall be Tressone; and being ffund culpable, sall fforfalt lyfe, landis, and guidis; as in our said Act of Parliament at mair lenth is contenit. And trew it is, that the said *Johnne Maxwall of Garrarie*, haising, in his politique and craftie maner, vpone sic conditiones of satisfactioun and recompence best knawin to him self, conqueist and acquyrat fra the said vmq^le^ *Johnne M^c^Kie of Glasshak* his haill worldlie moyane[1] and estait; and thairby drawin him to his daylie companie and attendance, alsweill within his hous of *the Garrarie*, as vther pairtis of the contrie quhair he maid his repair and residence, he, furth of his avaricioufe and churlifche difpofitioun, lotheing and weireing[2] of the faid *Johnne M^c^Kie* his companie, in the moneth of Julij, in the yeir of God I^m^.Vj^c^ and auchtene yeiris, to red and exoner him self of his cumpanie, devyset and concludit in his devillifche heart, the pitifull[3] and tressonable Murthour of the faid vmq^le^ *Johnne M^c^Kie*, as followis; and finding the faid vmq^le^ *Johnne* to be alwayis under his trust, credeit, assureance, and power; in sa far as, be the space of nyne monethis, or thairby, preceiding the tyme foirsaid of the said intendit Murthour, the faid vmq^le^ *Johnne* was for the maist pairt resoirting and making his daylie residence with him, at bed and buird, within his *Place of Garrarie*, sua that thairby na suspitioun of iniurie to be done be the faid *Johnne Maxwall* towardis the faid *Johnne M^c^Kie* could be thocht vpone be him; the faid *Johnne Maxwall*, for effectuating of his tressonable and devillifche plott, vpone the xviij day of the faid moneth of Julij, in the yeir of God foirsaid, knawing the tyme of the said vmq^le^ *Johnne M^c^Kie* his dyet, in cuming to his *Hous of Garrarie*, vnder the silence and clud of nycht, accumpaneit with the faid *George Maxwall*, his sone, and vtheris thair complices, bodin[4] with suordis and vtheris wapponis *inuasiué*, in the said vmq^le^ *Johnne* his cuming to the said *Place of Garrarie*, pat violent handis in his persone, band baith his handis and

[1] Means. [2] Getting fatigued or *wearied*. [3] Piteous. [4] Furnished; provided.

feitt, and thaireftir, in maift crewall and mercieles maner, playing the pairt of hangmen and burriowis,[1] with ane hair tedder,[2] ftrangillit and wirreit him to deid; and haifing, be that violent and crewall meane, bereft him of his lyfe, thay thaireftir cayreit him to ane peit mofs or burne, callit *the Burne of Ranieftoun*, within ane half myle to the faid *Hous of Garrarie*, quhairin they flang him: And fa, the faid vmq^le^ *Johnne McKie of Glaffak* was maift treffonabillie and crewallie murdreift and flane be the faid *Johnne Maxwall of Garrarie*, and *George Maxwall*, his fone, he then being vnder thair truft, credeit, affureance, and power, in maner befoir deducet; and thay, and aither of thame, ar airt and pairt of the faid treffonabill and barbarous Murthour, committit vnder truft and credeit; vpone fet purpois, prouifioun, precogitat malice, and foirthocht fellonie, in hie and manifeft contempt of our fouerane lordis authoritie and lawis, and expres aganis the tennour of the faid Act of Parliament; incurring thairthrow the pane and pwneifchment aboue writtin, expreffit thairintill, viz. as Tratouris and Murthouraris of the faid vmq^le^ *Johnne McKie*, vnder truft, to fforfalt thair lyvis, landis, and guidis, to the terrour and example of vtheris to attempt the lyk heireftir.

PERSEWARIS, Niniane McKie, eldeft fone to the defunct; Sir Williame Oliphant of Newtoun, kny^t^,
Aduocat to oure fouerane lord.

PRELOCUTOURIS in defence, Mr Alex. Peiblis, Mr Laur. Mcgill, Adame Cunninghame, Aduocattis.

The Aduocat producet his Maiefteis Warrand, daitit at New-mercat, the 13 of Januar, 1619, commanding him to infift in the pannellis perfute, for the Murthour contenit in the Dittay: Quhilk Warrand his lordfchip tuik vp agane. —My lord Aduocat declairis, that he is nocht prepairit, at this tyme, to perfew in this matter; and thairfoir defyret the famyn mycht be continewit to the fevint of July nixt.—The pannell, with thair prelocutouris, altogidder difaffentis to the faid continuatioun, and offerit thame felffis inftantlie reddie to abyde the tryell of the Law for the faid cryme, as altogidder innocent thairof; and thairupoun afkit inftrumentis.

THE Juftice, nochtwithftanding of the pannellis offer and declaratioun, continewis this dyet to the faid fevint day of Julij nixt; and Ordanis the pannell to be tane bak to waird to the tolbuth of Edinburgh.

The pannell offeris cautioune for thair compeirance the faid day; and allegit, in refpect thairof, thay fould nocht pas to waird.

THE Juftice Ordanit thame to geve in their Supplicatioune to the Counfall, be quhais Warrand and authoritie thai war committit, and to crave thair libertie and fredome furth thairof, vpone thair offer of cautioun to thair lordfchipis, for thair entrie, the day foirfaid; and accoirding as the Counfall fould command, in that matter, it fould be obeyit.

PRELOCUTOUR in defence, My Lord Maxwall.[3]

(Jul. 7.)—THE JUSTICE, be directioun of the Lordis of Secreit Counfall, and conforme to thair Lordfchipis expres Warrand, continewis this dyet, and all tryell to be tane thairintill, to the xv day of December nixtocum: And Ordanis the pannell to find cautione for thair compeirance and re-entrie that day, to vnderly the law for the faid Murthour, ather[4] of thame vnder the pane of thre

[1] Old Fr. *bourreau*, an executioner. [2] A hair *tether* or halter. [3] In addition to the above Prelocutors. [4] Each of them.

Thowſeand merkis. Quha, for obedience of the ſaid ordinance, ffand Eduard Maxuall of Hillis cautioun.

In reſpect of the quhilk cautioun fund be thame, the Juſtice ordanit the Provoſt and Bailleis of Edinburgh to put them to libertie furth of thair waird, &c.

[Assessores Justiciario, *Dominus Willielmus Levingſtoun de Kilſithe, et Dominus Georgius Eryſkin de Innerteill, Senatores Collegij Juſticie.*]

Prelocutouris in perſute, My Lord of Gairleis, The Laird of Larg-McKie.

Prelocutouris in defence,[1] The Maiſter of Maxwall; The Guidman of Hillis; Edward Forreſter, Commiſſar of Kirkcudbrycht; Johnne ȝoung, notter.

(Dec. 15.)—The pannell takis inſtrumentis of thair entrie; as alſo, that *my Lord of Gairleis* compeiris to perſew thame of thair lyves; and proteſtis for thair cautioneris releif.—The perſewaris producet the Dittay, with the Letteris and Roll of Aſſyſe; and proteſtis for thair cautioneris relief, and deſyret proces.

The perſones on pannell denyis the haill crymes contenit in the Dittay, and paſſis fra all diſputatioun aganis the relevancie thairof; and offeris thame ſelffis to the tryell of ane honeſt and vnſuſpectit Aſſyſe.

Assisa.

Johnne Dalrumple of Schalloche,
Andro Bruce of Bofark,
Williame Middlemeiſt, Conſtable of Dumbartene,
Duncane Hunter of Ballagane,
Williame Creichtoun of the Hill,
Johnne Maitland of Clonhie,
Johnne Kirkpatrik of Bracho,
Gilbert Baird of Kilhinȝie,
George Logane of that Ilk,
Williame Cunninghame of Polquharne,
Andro Craufurd of Barquharrie,
Dauid Welſche of Collieſtoun,
Walter Cant of Waſt-mylne,
James Birnie of Browbrie,
Malcolme Dalrumpill of Waterſyde.

It is allegit be the pannell, that *Johnne Dalrumple* can nocht pas vpone thair Aſſyſe, becaus he is nocht ane landit man of that qualitie and rank quhilk ſould be admittit to pas thairupoun; the ſaid Johnne Maxwall of Garrarie being ane landit Gentilman, in the rank of ane Barroun, worth thre thowſeand merkis of ȝeirlie rent, and aboue. *Secundo*, the ſaid Johnne is vſet and producet be my Lord of Gairleis, ane of his perſewaris, as ane Witnes befoir the Counſell, and hes gevin his Depoſitioun in this matter alreddie; and in reſpect thairof, can nocht be ane Aſſyſour. *Tertio*, he is man, tennent, and ſervand to *Joſiah Stewart*, quha hes aſſiſtit this perſute fra the firſt begynning thairof, and behavet him ſelf as pairtie.—It is anſuerit be my lord Aduocat, that the allegeance aucht to be repellit, as altogidder irrelevant, the ſaid *Johnne Dalrumple* being ane Gentilman of guid fame, and haiſing ſufficient moyane of his awin, quhairupoune he levis: And his Depoſitioun maid be him as ane Witnes can nocht ſtay him to be ane Aſſyſour: And as to that pairt, that he payis maill and deutie to *Joſias Stewart*, wha is pairtie aganis thame, *non relevat*, becaus he is nocht ane perſewar, nor compeiris nocht in this Judgement to perſew, nather payis he ony deutie to him bot for his teyndis, quhilk teynd-deutie can nawayis ſtay him to pas vpone this Aſſyſe.—It is allegit be the pannell, that, with the teynd-deutie, he is alſo ſubiect to the ſaid Joſias in daylie ſeruice.—The ſaid *Johnne Dalrumple* being ſuorne, declaris he is no forder ſubiect to *Joſias*, bot only in payment of his teynd.

The Juſtice admittis *Johnne Dalrumple*, and Ordanis him to be purget of partiall counſall; quha, being of new ſuorne, declarit he had gevin na partiall counſall, in this matter, in fauouris of this perſewar aganis the perſonis on pannel;—quha was thairfoir admittit.

It is allegit aganis *Walter Cant of Weſtmylne*, that he can nocht be admittit vpone this Aſſyſe,

[1] In addition to the Prelocutors who are already noted, under date, April 2, and Jul. 7.

becaus he is nocht duelland within Galloway, nor the foure halfis thairabout, conforme to the Act of Parliament, in anno 1579.—It is anſnerit be my lord Aduocat, that the allegeance aucht to be repellit, becaus he is duelland within Scotland; and the Act of Parliament citet is only in matteris of Perambulatioun, for tryell of methis and marches, and is nocht extendit to the crymes of Slauchter and Mutilatioun, &c.—It is allegit, that he can nocht be admittit, becaus of the foirſaid Act of Parliament, for *ex argumento a paritate rationis*, gif the perſones of Inqueiſt, in matteris of Perambulatioun, man (*must*) be induellaris within the boundis of the Scherefdome quhair the landis lyis, or foure halfis about, *multo magis*, in tryell of a Slauchter or Murthour committit, ſould the Aſſyſouris be induelleris within the boundis of the Scherefdome quhair the fact was done, or four halfis about.—Anſueris, *Statuta ſunt ſtricti juris, et non admittent extenſionem.*

The lyk exceptioun proponit aganis *Andro Bruce of Boſark*, quha duellis nocht within the Sherefdome, or foure halfis about.—My lord Aduocat repeitis his former anſueris for *Andro Bruce.*

It is forder allegit that *Walter Kant* is man, tennent, and ſervand to *my Lord of Murray*, quha aſſiſtis this perſute; and thairfoir, can nocht pas vpone this Aſſyſe. The ſaid Walter being ſuorne, gif he be man, tennent, or ſervand to the Erle of Murray? Declairis, he is ane of his Lordſchipis vaſſallis, and haldis his landis of him in ffew.

THE Juſtice, nochtwithſtanding of the former allegeances maid aganis the ſaidis Walter and Andro, and that the ſaid Walter is ane ffewar, Admittis thame vpone the Aſſyſe.

It is allegit aganis *Duncane Hunter of Ballagane*, that he can nocht pas vpone this Aſſyſe, becaus he is ane removeable tennent to *the Laird of Drumlangrig*, quha aſſiſtis this perſute, and is within degreis-defending to *the Lord of Gairleis*, perſewar. *The Laird of Ballagan* being ſuorne, declairit that he is *Drumlangrigis* vaſſall, and na remoueable tennent; quhome the Juſtice, in that reſpect, admittit.

It is allegit aganis *Eduard Maxwall in Laroche*, that he can nocht pas vpone this Aſſyſe, becaus *non habet in bonis*, and is nocht worth the Kingis vnlaw. *Secundo*, thair is bluid and deidlie ffeid ſtanding betuix the pannell and him vnreconceillit. *Tertio*, he is alreddie reſſauit witnes, and hes deponit in this matter, being producet be *my Lord of Gairleis* to that effect.—Anſueris, becaus he hes alreddie deponit as ane Witnes, he may the mair cleirlie be admittit ane Aſſyſour.

THE Juſtice, in reſpect thair is na penurie of Aſſyſouris, Ordanis him to ſtand by.

David Welſche of Collieſtoun admittit, of conſent.

THE lord Aduocat, for verificatioun of the Dittay, producet ane Teſtimoniall, ſubſcryuit be dyuerſe Gentilmen and vtheris, teſtifeing the forme of *Glaſſakis* binding, the tyme of his out-taking of the burne; and that he hes bene firſt ſtrangillit, befoir his caſting thairin. As lykwayis, producet the pannellis Depoſitione, with the Depoſitiones of dyuerſe famous Witneſſes, reſſauit and examinat be the Lordis of Secreit Counſell, in that matter; and thairupoun alſo aſkit inſtrumentis; and proteſtis, in reſpect thairof, for Wilful Errour, gif the Aſſyſe acquit.—The pannell proteſtit in the contrair, gif thay convict thame of that deteſtable cryme; quhairof, vpone thair kneyis, with grit and ſoleme aithes, thay affirmet thame ſelffis to be altogidder innocent.

VERDICT. The Aſſyſe, for the maiſt pairt, be the mouth and declaratioun of William Cunninghame, chanceller, ffand, pronuncet, and declairit the ſaidis *Johune Maxwell of Garrarie*, and *George Maxwell*, his lauchfull ſone, to be GILTIE, culpable, and convict of airt and pairt of the treſſonabill and barbarous

Murthour of the ſaid vmq^le *Johnne McKie of Glaſſak*, committit be thame in forme and maner ſpecifeit in thair Dittay.

Sentence. The Juſtice, be the mouth of Andro M^ccairtney, dempſter of Court, adiuget thame to be tane to the Mercat-Croce of Edinburgh, and thair, thair heidis to be ſtrukin frome thair bodeis: And all thair landis, heritages, tenementis, annualrentis, takis, ſteidingis, rowmes, poſſeſſiones, coirnis, cattell, inſicht pleneiſſing, guidis, and geir, to be fforfalt and eſcheit to our ſouerane lordis vſe, as culpable and convict of the ſaid treſſonable and deteſtable cryme: Quhilk was pronuncet for Dome.[1]

Hurting and Wounding.

Jun. 2.—Normond Robieſoun, ſone to Robert Robieſoun, mercheand burges of Sterling.

Dilaitit of airt and pairt of the Hurting and Wounding of Johnne Robene, ſone naturall to Johnne Robene, notter, burges of Sterling, in the caſting of him doun to the grund, and louping vpone his bak with the haill force of his body; and thairthrow breking of his bak-bone, and mutilating and making him impotent thairof, he being ane young boy of nyne yeiris of age, or thairby; committit in the Valay of Sterling, in the moneth of September, 1617 yeiris.

Persewaris, Johnne Robene and his father; Sir Williame Oliphant, kny^t.
Prelocutour in defence, Mr Thomas Nicolſoun, elder, Aduocat.

The Juſtice continewis this dyet to the thrid day of the air of the ſcherefdome of Sterling, or ſoner, to ane fyftene dayis wairning; and ordanis the pannell to find cautioun for his re-entrie. Robert Robieſoun, mercheand, his father, becomes cautioner.

Slaughter.

Jul. 2.—Johnne M^cdowell of Freuche.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^le Alexander M^ckie of Balſeir.

Persewar.
Sir Williame Oliphant of Newtoun, kny^t.

Prelocutour in defence.
Mr Thomas Hoip.

The Juſtice continewis this matter to the thrid day of the nixt Juſtice-air of

[1] Sir Johnne Dumbar of Mochrum, kny^t; James Kennydie of Crugiltoun; Alex. Dumbar, appeirand of Mochrum; Hew Kennydie of Areis; Adame Ahannay, burges of Wigtoun; Robert Maxwall of Barvannok; Vthreid Campbell of Areis; Johnne Carutheris of Wadfute; Harie Cunninghame of Kildonnane; Johnne Broune, ȝounger of Carſlatyre; George Gordoun of Barſkeoche; Johnne M^cdowell of Freuche; Patrik Ahannay of Kirkdaill; Alex. M^cculloche, appeirand of Netoun; Alex. Cunninghame of Powtoune; Fergus Dumbar, burges of Stranraer; and Adame Lyndſay, burges of Quhithorne, vnlawit, for thair nocht compeirance vpone the ſaid Aſſyſe; ilk ane of thame in the pane of ane hundreth merkis.

the ſcherefdome quhair the pannell duellis, (Wigtoun,) or ſoner, vpone xv dayis wairning. Plegio, Pat M'dowall de Creoches.

Hurting and Wounding—Masterful Theft and Stouthreif.

Jul. 11.—JOHNNE MURRAY, ſone to Thomas Murray, in the Stanehous of Geicht.

Dilaitit of the invading of Andro Meldrum of Rothiebirſbane, his maiſter, in cuming out the hie way betuix Kynroſchyre and the fferrie-ſyde: Hurting and Wounding him, with ane ſuord, in the heid and face, of purpois to haif ſlane him: And thaireftir, Steilling and away-taking, be way of maiſterfull Thift and Stouth-reif, of his maiſteris bonnet-caice, togidder with tua pair of ſilk ſchankis,[1] tua pair of ſilk gairtanes,[2] tua pair of roſes[3] of taffitie, tua ſmall lynning ſchankis, thre bonnet mutches,[4] thre pair of handis,[5] fyve overlayeris,[6] ane peirlet lane[7] ruff, tua naipkynnis, ane kame-caiſe,[8] with ane bruſch, with certane vther neceſſaris, being within the ſamyn, worth tua hundreth pundis; by and attour[9] certane writtis and euidentis,[10] being alſo thairintill; committit in the moneth of Maij laſt.

PERSEWARIS, Mr Andro Meldrum of Rothiebirſbane; Sir Williame Oliphant of Newtone, kny[t].

THE Juſtice, in reſpect thair is nocht ane ſufficient number of Aſſyſe compeirand, continewis this dyet to the xxj inſtantis: And Ordanis the pannell to be tane bak to waird, to the ſaid day.

Andro Fraſer of Staniewoid, William Keyth of Seatoun, James Seatoun, brother to the Laird of Mony, Mr Robert Elphingſtoun, Tutour of Glak, Johnne Ogilvie, ȝounger of Glaſſall, and Alexander Fraſer, indueller in Leyth, nocht compeirand on Aſſyſe, the Juſtice ordanit ilk ane of thame to be vnlawit in the pane of ane hundreth merkis.

ASSISA.

Robert Fraſer of Durres,
James Cheane, in Elrig,
Mr Robert Elphingſtoun, Tutour of Glak,
James Gairne of Blakfurd,
Johnne Arbuthnot of Carnegaw,
James Hervie of Elrig,
Andro Hervie, his brother,
James Keith of Craig,
Mr James Stewart, Commiſſar of Dunkeld,
Clement Ruſſell, mercheand,
Nicoll ȝule, mercheand,
Johnne Penman, mercheand,
Mathow Bailȝie of Littilgill,
Johnne Fairholme, mercheand,
Thomas Broun, lokſmyth.

Jul. 21.—THE Aduocat takis inſtrumentis of the ſweiring of the Aſſyſe; and producet the pannellis Depoſitiones, for verificatioun of the Dittay; and proteſtis for Wilfull Errour, gif thay acquit, &c.

VERDICT. The Aſſyſe, be the mouth of the ſaid Mr Robert Elphingſtoun,

[1] Silk stockings. [2] Garters. [3] Rosettes for the knees. [4] Caps. [5] Probably a sort of *mittens* or gloves. [6] A broad folding collar, falling over the shoulders and worn below the ruff, which was fastened about the neck. [7] A pearled lawn ruff? [8] Comb-case. [9] Over and above. [10] Writings and Title-deeds.

chanceller, ffand, pronuncet, and declairit, all in ane voce, the ſaid Johnne Murray, conforme to his awin Judiciall Confeſſioun and Depoſitiones producet, to be ffylet, culpable, and convict of the haill crymes aboue expremit.

Sentence. To be tane to the mercat croce of Edinburghe, and thair to be Hangit, quhill he be deid, and all his moveable guidis to be eſcheit, &c.

Taking the King's Free Liege—Famishing one of the Lieges to Death 'in privato carcere.'

Nov. 10.—Patrick Cowie, in Kincairdin; Johnne Dow, his ſervand; Johnne Anderſone, cordiner thair; Thomas Cowie, querriour thair; and Dauid Miller, ſalter in Eiſter Kincairdin.

Dilaitit of the taking and keiping of vmq^le^ Thomas Dauidſoun, hynd and ſervand to Alexander Leaſk, in Porter, be the ſpace of fyftene dayis, *in privato carcere*, within the ſaid Patrik Coweis hous; and thairfra cayreing him to the pitt of Tullieallane, quhair, throw want of intertenement,[1] he ffamiſchet and deit of hunger; and remanent crymes contenit in the Letteris.

Persewaris, Sir Williame Oliphant, kny^t^; Alexander Leaſk, as Maiſter.

The Juſtice continewis this matter to the thrid day of the nixt Juſtice-air of the Scherefdome quhair the defenderis duellis, ('Clakmannane,') or ſoner, vpone xv dayis wairning: And Ordanis thame to find new cautioun, &c.; quha ffand Sir George Bruce of Carnok, kny^t^, perſonallie preſent, for thair re-entrie.

Mutilation and Demembration.

Nov. 17.—Williame Oliphant of Gaſk.

Dilaitit for airt and pairt of the Demembering of David Malloche, ſervand for the tyme to vmq^le^ Dauid Toſcheoche of Monyvaird of his rycht hand.[2]

Compeirit Lawrence Oliphant of Coudie, and producet ane Warrand of the Lordis of Secreit Counſall, direct to my Lord Juſtice; quhairof the tennour followis.

Warrand *of the Lordis of Secreit Counſall.*

Justice, Juſtice clerk, and 3our deputtis. Forſamekill as the xvij day of November inſtant is appointit to Williame Oliphant of Gaſk, for his compeirance befoir 3ow, to vnderly the Lawis for the Mutilatioun and Diſmembering of Dauid Malloche: Nochtwithſtanding, accoirding to the Kingis Maieſteis expres Warrand, command, and directiouns in this matter, theaſe ar to command 3ow to continew the ſaid dyet to the tuentie fyve of Februar nixtocum; to the effect, in the meane tyme, the ſaid Williame may tak ſome courſe for ſatisfactioun of his pairtie: And that 3ow tak cautioun of the ſaid Williame for his perſonall compeirance the ſaid day, and diſpenſe with him and his cautioner for his nocht compeirance at this dyet: Quhairanent thir preſentis ſalbe 3our Warrand. At Ed^n^, the xvj day of November, 1619. Al. Cancell^s^. Mar. Melrois. Lauderdaill.

The Juſtice continewis the ſaid dyet to the ſaid xxv day of Februar nixtocum;

[1] Sustenance. [2] See Jul. 29 and Dec. 4, 1618. [3] Peter Oliphant of Rescobie.

and Ordanis cautioun to be fund for the ſaid Williame Oliphant his compeirance that day, &c.—Gilbert Adameſoun of Scoureing-burne become ſouertie, &c.

(Feb. 25, 1620.)—COMPEIRIT Laurence Oliphant of Condie, and producet ane Warrand of the Lordis of Secreit Counſell, quhairof the tennour followis.

JUSTICE, Juſtice clerk, and ȝour deputtis. Quhair as, the xxv day of Februar inſtant is appointit to Williame Oliphant of Gaſk, for his compeirance befoir ȝow, to vnderly the law for the ſlauchter of the Laird of Monyvaird, and mutilatioun and demembring of Dauid Malloche, his ſervand, of his rycht hand,[1] and vtheris crymes ſpecifeit in the Letteris raiſit thairanent: Neuertheles, this is to command ȝow to continew the ſaid dyet to the nynt day of Junij nixtocum, vpoun new cautioun, conforme to the ordour: And that ȝow diſpens with the perſonall compeirance of the pairtie: Quhairanent thir preſentis ſall be ȝour Warrand. At Halyrudhous, the xxiiij of Februar, 1620.

AL. CANCELL[s]. MAR. MELROIS. LAUDERDAILL.

Sir Johnne Carmichell of Medowflat, Capitane of Craufurd, becomes ſouertie, &c.

(Jun. 9, 1620.)—THE dyet deſerted, by command of another Warrant, ſigned 'Al. Cancell[s]. Melrois.'

[IF it were necessary still farther to prove the melancholy effects of the DEADLY FEUDS which raged in Scotland previous to the Eighteenth Century, perhaps few better illustrations could be adduced than what is contained in the present Case. The following affecting document is taken from the *Denmylne MSS.*, and requires no comment.]

LETTER, *the Privy Council of Scotland to the King, relative to the* DEADLY FEUD *between the Lairdis of Cultmalundie and Monyvaird.*[2]

MOST SACRED SOUERANE,

WHEREAS your MAIESTIE was pleaſit, tua yeiris ſyne, or thairby, to recommend vnto ws the ſatling and remoueing, by ane amicable forme and maner, the deadlie ffeade ſtanding betuix THE LAIRDIS OF CULTMALINDIE and MONYVAIRD and thair ffreindis,[3] vpoun occaſioun of the ſlaughter of THE LAIRD OF MONYVAIRD; and to move the pairtie greeued to accept of ſuche OFFERIS as the offendaris might reaſounablie performe: WE accordinglie wrote for ſa mony of the ffreindis as we know to haif cheif intereſſe in that mater, and vſed the beſt meanes we could to haif broght the ſame to ſome freindlie dreſſe; bot that dyet being caſſin af, vpoun alledgeance that ſome of the ſpeciall ffreindis wer omittit and not writtin for, we appointit a new dyet, and wrote for the whole ffreindis that wer gevin vp, who returnit thair anſwer to ws, in write, vnder thair handis, that thay could not medle in that mater, nor tak burdyne for *Monyvaird*, who is the principall pairtie haueand intereſſe, in reſpect of his minoritie. Whairupoun the mater deſertit, and we could go no forder thairin. At this ſecund dyet *Cultmalundie eldair* exhibit befoir ws OFFERIS, in write, vnder his hand, maid to the pairtie, contening the ſowme of ane Thowſand crownes for the Aſſlythement of that Slaughter, with the Baniſhement of *Alexander Bruce his ſone*, and *George Tyrie*, Meſſinger, who wer alledgeit to be the actuall ſlayaris of *Monyvaird*, during your MA[s] pleſour: And at that ſame tyme, we cauſit him gif ſatisfactioun to *Duncane Campbell* and *Dauid Malloche*, who wer deadlie hurte quhen *Monyvaird* was ſlayne, by payment making to thame of twa Thouſand pundis: Quhairupoun thay haif gevin ane diſcharge of thair intereſſe in that mater; as the ſame produceit befoir ws beiris.

[1] The local saying,—

'AFF HANDS IS FAIR PLAY—DAVIE MALLOCH SAYS NAY!'

seems quaintly to allude to this incident. [2] *Sir James Balfour's MS. Collections*, Adv. Lib. [3] Blood-relations.

This ffeade has altogidder vndone *Auld Cultmalundie;* for his eſtait is exhauſtit and wrackit, and he is become verie waik of his judgement and vnderſtanding, by the greif that thir troubles hes broght vpoun him; whilkis wer the occaſioun of his wyffis deathe, and of the exyle and baniſhement of his ſones and freindis, now be the ſpace of foure yeiris; in the quhilk exyle, tua of his freindis of goode rank and qualitie hes depairtit this lyffe.

This being the effect of oure dealing in this buſſynes, We haif beene intreated be the pairtie, humelie to preſent the ſame to your Maieſteis conſideratioun. And ſo continewing our vnceſſant prayeris vnto God for youre MAs long and happie reignne, We reſt,

YOUR MAs humbill and obedient ſubiectis and ſeruitouris,

AL. CANCELLs. MAR. MELROS. GEORGE HAY.

HALIERUDHOUS, xxj of Marche, 1622.

TO THE KING his moſt ſacred and excellent MAIESTIE.

Taking Captive—Murder—Masterful Theft and Stouthreif.

Dec. 8.—DUNCANE CAMPBELL of Glenlyoun.

Dilaitit of airt and pairt of the violent Taking and Apprehending of vmqle Allane McRannald in Swynnart, cayreing and keiping him captiue and priſſoner ane nycht, within the ſaid Duncane his Place of Megernie:[1] And for Murdreiſing him with durkis, vpone the morne eftir his taking, ane myle or thairby fra the ſaid Hous: And be way of Maiſterfull Thift and Stouth-reif, ſteilling and away-taking fra him of his purſe, with ane thowſeand pundis of gold and ſilver being thairintill; committed in anno 1601 yeiris.

PERSEWAR, Angus McRannald of Vlladill, as brother.

THE JUSTICE continewis this matter to the thrid day of the nixt Juſtice-air of the Sherefdome quhair the defender duellis, (Perth,) or ſoner, vpone xv dayis wairning.

Archibald Campbell of Glencarradell become cautiouner for his re-entrie.

Murder.

Dec. 8.—JOHNNE MOITT in Waſthouſſis, aboue Newbottile.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of Beſſie Broun, his vmqle ſpous, be ſtreking hir in the heid, and wounding hir thairin with ane grit kent,[2] to the effuſioun of hir bluid; committit be him vpone ane Setterday, at evin, in the moneth of October laſt; quhairof ſcho deceiſſit within tuelff houris thaireftir.

PERSEWER, Sir Williame Oliphant, knyt. PRELOCUTOUR in defence, Mr Alexander Cuming.

It is allegit be the pannell, that na proces can be led aganis him, vnles thair

[1] In Glenlyoun, Perthshire. In the preface to Douglas's Baronage, notice is taken of a very remarkable Red-book, (*an Leavar-diarig,*) written in the Celtic character, which was destroyed in the fire which consumed Miggerny Castle. It is there remarked, that 'some extracts from this book are in the hands of several Families in the Highlands.' See likewise, Prefatory Notice to HISTORY OF THE KENNEDIES, Edinburgh, 1830. 4to. [2] Staff, or cudgel.

war ane pairtie informer to aſſiſt his Maieſteis aduocat, and to ſueir the Dittay to the Aſſyſe, the Dittay being ffund relevant to pas thairto; and ſeing nane of the kyn and freindis of the woman ſlane compeiris to perſew, or to informe his Maieſteis Aduocat in this perſute, the Juſtice can nocht put him to ane Aſſyſe. —It is anſuerit be my lord Aduocat, that the allegeance is impertinentlie proponit be the pannell; and ſayis, that albeit the freindis of the pairtie ſlane and he wald collude[1] togidder, yit, ſeing the Prince wantis ane ſubject, be the fact committit, the Kingis Aduocat hes verrie guid intreis to perſew, without ony informer: And thairfoir, nocht only ſould the Dittay pas to ane Aſſyſe, bot he, for committing of the ffact lybellit, ſould be exemplarie pwneiſt for the ſamyn, being fund giltie thairof.

Verdict. The Aſſyſe, for the maiſt pairt, be the mouthe of Thomas Hog, in Eiſthouſſis, chanceller, ffand, pronuncet, and declairit the ſaid Johnne Motte to be ffylet, culpable, and convict of the ſaid Slauchter.—Sentence. To be tane to the Caſtelhill of Edinburghe, and thair his heid to be ſtrukin frome his body; and his haill guidis to be eſcheit, &c.

Slaughter—Wearing and Shooting of Hagbuts and Pistolets.

Dec. 22.—Johnne Lyddell of Halkerſtoun.

Dilaitit of airt and pairt of the Slauchter of vmq[le] Johnne Bell, ſervand to Johnne Lord Borthuik; committit vpone the landis of Hauch-heid, vpone the aucht of October laſt, quhair the ſaid Johnne Lyddell, with ane charget hagbut in his hand, invaidit the ſaid vmq[le] Johnne Bell for his ſlauchter, ſchote him in his lichting[2] af his horſe with tua bullettis, at the left pape, throw the heart; and ſlew him with the ſaid ſchote: And for contravening of the Actis of Parliament, in beiring and ſchuiting of hagbutis and piſtolettis, &c.

The Juſtice, of conſent of aither pairtie, continewis this matter to the nyntene of Januar nixt: And Ordanis the pannell to be returnet to Waird to the Tolbuth of Edinburghe, out of the quhilk he was tane.

Perſewaris, Barbara Levingſtoun, the relict; Sir Williame Oliphant of Newtoun, kny[t], his Maieſteis Aduocat, for his hienes intreis.

Prelocutouris in defence, James Lyddell, in Leyth; Mr Johnne Cranſtoun, Miniſter thair; Mr Laurence M[c]gill, and Mr Dauid Prymrois, Aduocattis.

(Jan. 19, 1620.)—It is allegit be the pannell, that the Dittay in that point thairof, 'airt and pairt,' is nocht relevant, except the perſewar condiſcend vpone the names of the perſones that war complices or aſſociattis.—Anſueris, aucht to be repellit, in reſpect of the Act of Parliament, ſuſtening airt and pairt to be

[1] Enter into collusion with each other, to defeat the ends of public justice. [2] Alighting.

relevant aganis any perſone accuſet of ane cryme.—The pannell denyis the haill Dittay to be of verritie.

The Justice remittis the tryell thairof to the Aſſyſe.

Barbara Levingſtoun, relict, being ſolemlie ſworne, declairit, that the Dittay is of verritie; and that ſcho hes juſt caus to perſew the pannell for the Slauchter of hir huſband. Quhairvpoun my lord Aduocat aſkit inſtrumentis, and Proteſtis for Wilfull Errour aganis the Aſſyſe, gif thay acquit: As alſo, tuik inſtrumentis of the productioun of the hagbut, quhairwith the ſaid vmq^le Johnne Bell was ſlane.

Verdict. The Aſſyſe, be pluralitie of voittis, ffand, pronuncet, and declairit the ſaid Johnne Lyddell of Halkerſtoun to be Clanget, innocent, and acquit of the ſaid Dittay, and haill crymes aboue writtin mentionet thairintill.

In reſpect quhairof, the Juſtice ordanit him to be put to libertie furth of the ſaid Tolbuth of Edinburghe, quhairin he was wairdit, and na langar to be detenit thairintill for the ſaidis crymes; he making ſatisfactioun to the javellour[1] for his expenſſis.

Slaughter.

Jan. 19, 1620.—Alexander Grahame, ſone to vmq^le Dauid Grahame, in Arduthie, and Johnne M^ckane, ſone to Williame M^ckane, burges of Montroiſe.

Dilaitit of airt and pairt of the Slauchter of vmq^le Mr Alexander Keith, brother to Sir George Keith of Drumtochtie; committit be thame, in companie of Robert Grahame, brother to the ſaid Alexander, vpone the Sandis of Montrois, vnder nycht, vpone the tent of December laſt.

Perſewaris, Sir George Keith of Drumtochtie, kny^t, James Keith of Harvieſtoun, Mr Williame Keith, brother to the defunct; and Sir Williame Oliphant, kny^t.

Prelocutouris in defence, Mr Alexander Peiblis, Mr Roger Mowat, Aduocattis.

The perſewaris producet Hoirning aganis Robert Grahame, ſone to Dauid Grahame of Arduthie.

The perſones on pannell offerit thame ſelffis to the tryell of the Law, for the crymes contenit in the Summondis, quhairof thay declairit thame ſelffis to be innocent; diſaſſenting *ſimpliciter* to all forder continuatioun.—My lord Aduocat declairis that this Slauchter was committit vnder nycht, quhairof as yit na certane licht of the pannellis guiltines thairof is brokin vp; and thairfoir, deſyres thame to be put vnder cautioun, for thair re-entrie, vpone xv dayis wairning.

The Juſtice continewis this dyet to the thrid day of the nixt Juſtice-air of the Scherefdome quhairin the pannell duellis, (Forfar,) or ſoner, to ane fyftene dayis wairning.

[1] Gaoler; jailer. Old Fr. *javilleur*.

Slaughter.

Jan. 21.—JOHNNE DUNCANE, baxter[1] in Dudingſtoun.

Dilaitit of the crewall Slauchter of vmq^le Johnne Buchannan, baxter, indueller of the Cannongait; committit in the hie-way betuix Eiſter and Weſter Dudingſtoun, vpone the ſaxt of Januar inſtant, be ſtreking of the ſaid Johnne Buchannane with ane knyfe, vnder the left pape; quhairof, within tuelf houris thaireftir, he deceiſſit.

PERSEWARIS, Margaret Robertſoun, the relict; Sir Williame Oliphant, kny^t.

The pannell acknowleges the cryme, and craves God, his Maieſtie, and the pairtie pardoun thairfoir.

VERDICT. The Aſſyſe, all in ane voce, in reſpect of the pannellis Judiciall Confeſſioun maid be him, confeſſing the ſaid cryme to be of verritie, ffand, pronuncet, and declairit the ſaid Johnne Duncane to be ffylet, culpable, and convict, &c.—SENTENCE. To be tane to the Caſtell hill of Edinburgh, and thair his heid to be ſtrukin from his body; and all his moveable guidis to be eſcheit to his hienes vſe, as convict of the ſaid cryme.

Murder—Horse-stealing.

Feb. 25.—JAMES REOCHE.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of vmq^le Alexander Sandieſone, ſervand to Hew Falconer of Innerlochtie; committit in September, vpone Michelmes Evin, in anno 1618, at the ȝett of Innerlochtie, in ſtaying the ſaid James, and reſiſting him and his brother in the ſteiling and away-taking of the ſaid Hew Falconeris horſe furth thairof, be ſchuteing the ſaid Alexander throw the body with ane piſtolett.

PERSEWARIS, Hew Falconer of Innerlochtie, his maiſter; Sir Williame Oliphant of Newtoun, kny^t.

It is alleget be the pannell, that the allegit Slauchter was nocht committit be him; bot the defunct, being raviſcheing ane woman, the pannellis brother being thair preſent, and he in companie with him, imployit thair help to preſerve the woman and to ſet hir frie; for the quhilk, the defunct, haiſing ane knyfe in his hand, invaidit the pannellis brother thairwith; quhairupoun the pannellis brother, for his awin ſaiftie, drew ane piſtolet frome his ſyde, and ſchote the defunct thairwith; and ſa, the fact being committit be his brother, the pannell can nocht be perſewit thairfoir.—It is anſuerit be my lord Aduocat, that the allegeance aucht to be repellit, in reſpect of the Dittay beiring him to be airt and pairt of the defunctis ſlauchter; and that the Slauchter was committit be thame in the ſteilling of ane horſe fra the defunctis maiſter, haiſing cum that eirand to the Hous, at that tyme of the nycht.

[1] Baker.

Assisa.

Mr James Stewart of Ladywall,
Walter Hay in Forrefteris-fait,
Williame Douglas of Erlefmylne,
Alexr Brodie, chalmerlane of Kinloife,
Dauid Dumbar in Tarves,
Mr James Forbes of Hauchtoun,
Johnne Roife, proveift of Nairne,
Mr Dauid Stewart, and Patrik Weymes, fervandis to the Earl of Murray,
Alex. Farquhar, tailȝeour burges of Edinburgh,
Johnne Caddell, burges of Edinburgh,
Alex. Home, burges thair,
Thomas Hunter, burges thair.

The Aduocat takis inftrumentis of the fuering of the Affyfe; and producet, for inftructing the Dittay, the pannellis Depofitioun, maid in prefens of the Lordis of Secreit Counfell; and proteftis for Wilfull Errour, gif thay acquit.

Verdict. The Affyfe, all in ane voce, ffand the faid James Reoche to be ffylet, culpable, and convict of airt and pairt of the Slauchter of the faid vmqle Alexander, committit vnder nycht, in the fteilling of the faid Hewis horfe.—Sentence. To be tane to the Caftell-hill of Edinburgh, and thair his heid to be ftrukin frome his body; and his haill guidis confifcat to his Maiefteis vfe.

Hamesucken—Slaughter.

Mar. 8.—Johnne Rogersoun, in Bratmurefland.

Dilaitit of the crewall Slauchter of vmqle Katharene Broun, fpous to Hew Broun in Windiehillis,[1] be (by) cuming be (by) way of Hamefuckin to hir duelling hous in Windiehillis, in the moneth of Apryle 1613 yeiris, quhair fcho was in fober maner for the tyme; and thair crewallie invaidit hir for hir flauchter, becaus fcho had houndit hir dog at his fcheip; tuik hir be the fpaldis,[2] and violentlie flang hir over tua kyis[3] bakis; thaireftir threw hir fydis to ane tymber bed,[4] and thairby brak hir haill intrallis within hir; and thaireftir, with his feit and handis, crewallie punfchet and ftrak hir vpon the bak, wambe,[5] and fydis, and brak hir heart-pypes thairwith; fua that thairby fcho tuik bed, and keipit the bed the fpace of fax dayis, or thairby, continuallie vomeiting hir heart-bluid; and in the moneth of Maij thaireftir, fcho deceiffit of the faidis hurtis; and fa, was crewallie and vnmerciefullie flane be the faid Johnne Rogerfonne: And he is airt and pairt of the faid flauchter; committit vpone fet purpois, prouifioun, and foirthocht fellonie, as at lenth is contenit in the faid Dittay.

Persewar, Hew Broun in Windiehillis, as fpous to the defunct.

Prelocutouris in defence, the Laird of Cloifburne; Adame Cunninghame, Aduocat.

The pannell offeris him felff to the tryell of the law for the cryme foirfaid, quhairof he is altogidder innocent.

Assisa.

Johnne Padȝeane, younger of Newtoun,
Mr Alexander Flemyng, minifter at Dalgarnok,
Thomas Wauche, elder of Schawis,
Thomas Wauche, his fone.[6]

[1] The crime is thus briefly described in another place,—'be geving hir dyucrse bauch, blae, and bludie straikis, in dyuerse pairtis of hir bodie.' [2] Fr. *épaules*, shoulders. [3] Cows. [4] That is, dashed her with violence against or upon a wooden bedstead. [5] Belly. [6] The rest of the Assise are persons of no note.

VERDICT. The Assyse, all in ane voce, be the repoirt and declaratioun of the said Mr Alexander Flemyng, chanceller, ffand, pronuncet, and declarit the said Johnne Rogersoun to be Clene, innocent, and acquit of airt and pairt of the slauchter, and haill circumstances thairof specifeit in his Dittay.

Forgery—Falset—Counterfeiting a Subscription to a false Bond.

Apr. 20.—THOMAS DEMPSTER, sumtyme of Muresk.

Dilaitit of airt and pairt of the ffalsiefeing, sforgeing, and devyseing and counterfuteing of the subscriptioun of ane ffalse Band of Reuersioun, &c. specifeit in his DITTAY following, viz.

FORSAMEKILL AS, albeit the said Thomas, be his birth, was ane gentilman borne, provydit, be vertew of his parentis and predicessouris, to the successioun and richt of dyuerse landis, rowmes, and possessiones; the quhilkis, be his leud and godles misgovernment, ar maist schamefullie and vnworthielie spendit and put away, to the impoverisching alsweill of him selff, as preiudice and disapointment of his posteritie: ȝit the said Thomas, altogidder sensles of that his miserable cairage, nawayis being movet thairwith, bot rather resolveing to rwn heidlongis in all godles and cruiket courses, as a man sauld and gevin over to the practize of the samyn; amangis vtheris, his vnlauchfull and damnable proceidingis, a fourtene ȝeir syne or þairby, he maist falslie, fraudulentlie, and dissaitfullie plottit, devyset, forget, and drew vp ane false and counterfute BAND, conteuing the tennour of ane fals and simulat Reuersioun, as gif the samyn had bene maid and subscryuit be vmq^le^ *Walter Barclay of Toweis*, quhais name and subscriptioun was also falslie counterfute be the said Thomas, with the Witnesses subscriptiones infert thairintill; beirand in effect, that the said vmq^le^ *Walter Barclay* confessit and grantit him to haif ressauit fra vmq^le^ *James Dempster of Auchterles*, his father, ane Reuersioun maid and subscryuit be vmq^le^ *Patrik Barclay*, sumtyme *of Towie*, his father, in fauouris of vmq^le^ *Johnne Erle of Buchan, Lord of Glendovachie*, subscryuit at *the Castle of Banff*, the first day of July 1547 ȝeiris, for redemeing and outquyteing fra the said vmq^le^ Patrik and his airis, *Lairdis of Towie, of the Landis of Collane*, with the ffischer-heaven and remanent pairtis, pendicles, and pertinentis of the samyn, lyand within the Lordschip of Glendovachie, and Sheresdome of Banff, vpone payment and delyuerance of ane hundreth angell-nobles gold and wecht; with ane nyntene ȝeir Tak, eftir the Redemptioun, contening frie Office and jurisdictioun of Bailȝerie, with payment of thre-scoir merkis, as for the ȝeirlie maill thairof allanerlie: And that be vertew of the foirsaid simulat Band, the said vmq^le^ *Walter Barclay of Toweis* obleist him to delyuer bak agane the samyn Reversioun to the said *James Dempster*, father to the said Thomas, at quhat tyme or how sone it sould happin him, and his airis, to be distressit or put at for delyuerie, or exhibitioun of the samyn, be the airis maill of the said vmq^le^ *Erle of Buchan*, and vtheris haiffand richt thairto; and thairwith to pay to the said *James Dempster* and his airis, the sowme of ten thowseand pundis of liquidat expenssis, in caice of failȝie: As the said Band, contening the tennour of the said fals Reuersioun, with dyuerse vtheris clausses at lenth set doun thairintill, all falslie sforget, devyset, and counterfute, first be the said Thomas, and thaireftir writtin over at his command and directioun be *Airthour Meldrum*, Scule-maister and Reidar at Kintor, and ante-daitit be him, at the said Thomas command, at Lambes last, daitit at Mure-esk, the first day of October 1585, be the space of threttie-foure ȝeiris of befoir, in the selff proportis. LYK AS, in ane actioun of Improbatioun intentit laitlie befoir the Lordis of Counsell and Sessioun, at the instance of *Sir Patrick Barclay*, now of *Towie elder*, and *Patrik Barclay younger* his sone, with concurrence of our souerane lordis Aduocat, for Improbatioun of the foirsaid Band and Reuersioun, ingrossit thairintill, the saidis Lordis of Counsell and Sessioun, efter tryell tane be them in the premisses, hes ffand and declairit be thair Decreit, gevin vpone

the fecund day of Marche inftant, conforme to the faid *Thomas* awin Confeffioun and Depofitioun, fubfcryuit be his awin hand, in thair haill Lordfchippis prefens, that the foirfaid Band and Reuerfioun foirfaid, ingroffit thairintill, is fals and fenȝeit, falflie forget, fabricat, and devyfet be the faid *Thomas*, and the faid *Airthour Meldrum*, at his command and directioun: And that the faid *Airthour*, be his command and directioun, counterfute the names and fubfcriptiones of *Patrik Chalmer*, *Alexander Frafer*, and *Alexander Watfoun*, thre of the Witneffes infert thairintill: And that the faid *Thomas* him felff counterfute, and pat to with his hand the name and fubfcriptioun of the faid vmq^le^ *Walter Barclay of Towie*, allegit maker of the faid Band, with the names of *George Leflie*, and *James Innes*, uther tua Witneffes infert thairintill: And in refpect thairof, the famyn Band was, be thair Lordfchipis directioun, in thair Lordfchipis prefens, immediatlie cuttit, cancellit, and deftroyit, and declairit to mak na fayeth in judgement, nor outwith, in tyme cuming: And the faid *Thomas*, for his former ffalfett, (was) alfo Ordanit be the faidis Lordis Decreit to be pwneift in his perfone and guidis, conforme to the lawis of this realme; quhilk aucht and fould be execute vpone him with all rigour, to the terrour and example of vtheris to attempt the lyk. As the faidis Lordis Decreit, togidder with the faid *Thomas*, his awin and the faid *Airthour Meldrumes* Depofitiones, confeffing cleirlie the ffalfet aboue writtin, producet be our faid fouerane lordis Aduocat with the Dittay aboue fpecifeit, for verificatioun thairof, at lenth beiris.

The pannell allegit, that in refpect the ffalfe Reuerfioun quhairupoun he is accufet, was nevir vfet nor abiddin at be him, to the hurt of *the Laird of Towie* or ony vther, that thairfoir the Juftice could nocht put him to ane Affyfe.—It is anfuerit be my Lord Aduocat, that the allegeance aucht to be repellit, in refpect of the Dittay, and of the Lordis Decreit, quhairupoun the famyn is foundit, ffinding the Reuerfioun to be ffalflie fforget be the pannell, and that *the Laird of Toweis* fubfcriptioun was falflie counterfute, and put thairto be the pannell; and thairfoir Ordaning him to be pwneift, conforme to the Lawis of this realme.

The Juftice Repellis the pannellis allegeance, in refpect of the anfuer; and Ordanis the Dittay to pafs to ane Affyfe.

Assisa.

George Logane of Bonytoun, elder,
Williame Lauder, bailȝie of Dumbar,
Malcolme Stevinfoun, Tutour of Hirdmeftoun,
Michell Ramfay of Forther,
James Halyburtoun, mercheand,
Patrik Elis, ȝounger, mercheand,
Capitane Patrik Heiring,
Johnne Dougall, mercheand,
Johnne Schaw, mercheand,
Johnne Smyth, mercheand,
Archibald Law, goldfmyth,
Harie Hoip, mercheand,
George Hammiltoun, mercheand,
Eduard Johnneftoun, mercheand,
Williame Cryftiefoun, tailȝour.

Verdict. The Affyfe, be the repoirt and declaratioun of the faid Chanceller, all in ane voce, ffand, pronuncet, and declairit the faid Thomas Dempfter to be ffylet, culpable, and convict of the haill ffalfettis fet doun in his Dittay above writtin.—Sentence. To be tane to the Caftell-hill of Edinburgh, and thair his heid to be ftrukin frome his body; and all his moveable guidis and geir pertening to him to be efcheit to his Maiefteis vfe, &c.[1]

[1] The frequency of the crime of Forgery, during some years preceding the date of this Trial, seems to have induced the Public Prosecutor to make several severe examples. Not a few of the criminals were persons of considerable rank in society, who, by desperate courses, had been reduced to the worst shifts to procure the means of subsistence.

Murder.

Jun. 14.—ROBERT HODGE in Spitteltoun, and James Mitchell, myller at Dalmahoy mylne.

Dilaitit of airt and pairt of the Slauchter and Murthour of vmq^le^ Patrik Mitchell, ſkynner; committit in Marche laſt or thairby, be ſtreking him with kentis and ſlaillis, in dyuerſe pairtis of his body, and douking him in the mylne-leid or dam of Dalmahoy-mylne; quhairof he within xxiiij houris deceiſſit.

PERSEWAR, Johnne Mitchell in Langſyde, as father.

PRELOCUTOURIS in defence, Mr Robert Lermonthe, The Laird of Dalmahoy.

THE Juſtice continewis this dyet to ſfryday nixt.

Jun. 16.—COMPEIRIT Johnne Mitchell, perſewar, and declairit that the perſones on pannell ar altogidder innocent of the crymes contenit in the Letteris; and thairfoir he paſt *ſimpliciter* fra thair perſute, as innocent thairof.—The pannell takis inſtrumentis of the perſewaris Declaratioun, and paſſing *ſimpliciter* fra thair perſute; and nochtwithſtanding thairof, offerit thame ſelffis to the tryell of the Law for the ſaid allegit crymes, ſeing thair is ane ſufficient number of honeſt men heir preſent, quha war ſummoned be the perſewar to pas on thair Aſſyſe, and quha beſt knawis the verritie of that matter; and thairfoir, as of befoir, deſyret my lord Juſtice that thai mycht be put to ane tryell, &c.

THE Juſtice, in reſpect of the perſewaris declaratioun and paſſing fra the pannellis perſute, Ordanis the dyet to deſert; and na Letteris to be direct aganis thame, in this matter, in ony tyme cuming, at the inſtance of thir perſewaris.

Murder committed under Trust and Friendship.

Jun. 16.—HARIE GORDOUN of Haddo.

Dilaitit of the crewall Murthour and Slauchter of vmq^le^ Johnne Johnneſtoun, ſervand and neir kynſman to the Laird of Caſkieben, be ſchuiting him throw the body with ane double muſket, charget with fyve bullettis, vnder truſt and freindſchip, at the dur of the ſaid Hareis duelling-hous, the xxiiij of Marche laſt.

Robert Johnneſtoun, in Corſhill, as father to vmq^le^ Johnne, togidder with Sir Williame Oliphant, producet the Letteris, deulie execute and indorſate, &c.

THE Juſtice Ordanit Adame Gordoun of Boighoill, as cautiouner, to be vnlawit for nocht entrie of the ſaid Harie, in the pane of Tua hundreth merkis: And ſiclyk, that the ſaid Harie be denuncet rebell and put to the horne, and all his moveabill guidis to be eſcheit, &c.

Murder by Drowning, &c.

Jun. 16.—DONALD NEILSONE of Affint, Neill Neilſone, his ſone, and Neill M^c^Eane Allaſter.

Dilaitit for taking vmq^le Donald McAllaſter V^cEane V^cHenrie, binding him hand and fute, and caſting him in ane boit; and thaireſtir cayreing him to ane craig[1] in the Sea of Claſneſſie, in Aſſint, quhair the ſie overflowing the ſaid craig, he was pitiefullie[2] drownit and cayreit away to the grit Ocean-ſie; and ſa, crewallie Murthouret be thame.

Michaell Anderſone, tailzeour in the Potter-raw, as cautioner, amerciated for nocht repoirting of the Letteres deulie execute and indorſate, and perſewing thairof, purcheſt at the inſtance of Johnne McAngus V^cHenrie, neir kynniſman of the ſaid vmq^le Donald, viz. 100 merkis for the ſaid Neill McEan Allaſter; and for the vther tua defenderis, ather of thame in tua hundreth merkis.

Slaughter.

Jun. 20.—Williame Johnneſtoun, elder of Kellobank; Williame Johnneſtoun, zounger, his ſone; and Johnne Johnneſtoun, alſo his ſone.

Dilaitit of airt and pairt of the Slauchter of vmq^le Williame Johnneſtoun of Kynnel-heid; committit in anno 1619.

Perſewar, Jeane Johnneſtoun, as dochter.

Assisteris of the perſute, Robert Johnneſtoun, callit of Moſſope, Thomas Johnneſtoun of Beirholme, James Johnneſtoun of Erſchag.

Prelocutouris in defence, Mr Thomas Nicolſone, elder, Mr Laurence M^cgill (Advocates.)

The perſewaris paſſis *ſimpliciter* fra the pannellis perſute, for the crymes foirſaidis: Quhairvpone the pannell aſkit inſtrumentis.

Continued, 'for the Kingis pairt,' to the third day of the next Juſtice-air, or ſooner, on xv days warning.

Taking captive and prisoner—Oppression, &c.

Jul. 12.—Williame Garioche, ſone to James Garioche of Kinſtair, and Thomas Anderſone in Awfurd.

Dilaitit for being in companie with *Alexander Forbes*, ſumtyme *of Toweis*, vpone the xxj day of Januar, 1620 laſt, bodin[3] with foure piſtolettis and tua lang gwnes, ſuordis, durkis, and vtheris wappones *invaſiué;* and cuming airlie in the moirning, befoir the brek of day, to the duelling-hous of George Garioche, in Tuliechetlie, ſone-in-law to Johnne Bonar, in Tulliechetlie, quhair the ſaid Johnne was, in ſober and quyet maner, for the tyme, lying in his bed; and be plane force and violence entering within the ſaid hous, pat violent handis in the perſone of Barbara Forbes, ane ſervand thairof, drew hir to the ffyre, and in maiſt barbarous and crewall maner held hir aboue the ſamyn, thraitning to caſt hir thairin,

[1] Crag, or rock. [2] Piteously; lamentably. [3] Furnished; provided.

and to burn hir quick,[1] gif ſcho reveillit nocht to thame quhair the ſaid Johnne Bonar was: AND lykwayis, ffor the putting violent handis in the perſone of Robert Broun, ane vther ſervand of the ſaid hous, and halding ane drawin durk to his breiſt, thraitning to ſtrek him thairwith, gif he alſo reveillit nocht to thame quhair the ſaid Johnne Bonar was for the tyme: AND laſt, vpone knawlege gevin to the ſaid Alexander Forbes of Toweis and his complices, that the ſaid Johnne Bonar was in his bed within the ſaid hous, ffor thair cuming to him to his bedſyde, and drawing him furth of his bed in maiſt violent maner, taking him captiue and priſſoner, and cayreing him furth of the ſaid hous be the ſpace of tua myles, to the watter of Lochell, and douking[2] him dyuerſe tymes thairin; and thair compelling him to yeild to the furneiſſing to the ſaid Alexander Forbes, and delyuering to him of ffyve hundreth merkis money; and becaus of the ſaid Johnne Bonar his refuiſall of performeing thaireftir of his promeis, ffor cayreing him with thame, as ane captiue and priſſoner, to the duelling-hous of Robert Merſar of Edindowie, and keiping him thairin, as ane captiue and priſſoner, be the ſpace of tua dayis and tua nichtis togidder: AND for beiring and weiring of hagbuttis and piſtolettis, contrair the tennour of the Actis of Parliament.

Compeirit perſonallie the ſaid Williame Garioche and Thomas Anderſones, and maiſt willinglie offerit thame ſelffis to the tryell of the law, diſaſſenting *ſimpliciter* to all maner of continuation: And thairfoir proteſtit for thair cautioneris (Mr Williame Forbes of Craigievar, and Alexander Hill, litſter,[3] burges of Aberdene) releif.—Compeirit on the vther pairt, Johnne Forbes, elder of Brux, as procurator, ſpeciallie conſtitute, for the ſaid Johnne Bonar, perſewar, and be vertew of ane Letter of procuratioun, ſubſcryuit with his hand, of the dait the aucht day of July inſtant; bearing, that the ſaid Johnne, in regaird of his grit age and inhabilitie to travell to the keiping of this dyett, and that he vnderſtuid the ſaidis Williame and Thomas, quha had fund cautioune, war innocent of the haill crymes aboue writtin, Ordanit the ſaid Johnne Forbes of Brux to pas *ſimpliciter* fra thair perſute, &c. Quhilk proteſtatioun the Juſtice admittit.

House-breaking—Stouthreif—Theft.

Jul. 21.—PATRIK GRANT of Davachmoir; Duncane Grant, in Weſter Bunlody; James M'allaſter Vic Eane Oig, in Inchebroun; Ewin M'neill V'quyane, in Littill Clwne.

Dilaitit for breking of Johnne Grant of Glenmorieſtoun his hous of Belmacaene, in Vrquhart; breking vp of fourtene lokit kiſtis[4] being thairin; ſteilling and away-taking of certane guidis and geir being within the ſaidis kiſtis, all pertening to the ſaid Johnne Grant; committit in Apryle, 1615 yeiris.

[1] Alive. [2] Ducking. [3] Dyer. [4] Locked chests.

Persewar, Johnne Grant of Glenmorieſtoun.

The perſewar paſſis *ſimpliciter* fra the perſute of the ſaid Ewin; and declairis him to be innocent thairof.

Continued to the thrid day of the nixt Juſtice-air of the ſcherefdome quhair thay duell, or ſoner, vpone xv dayis wairning. Johnne Grant, appeirand of Ballindalloche, become ſouertie, &c.

Taking captive—Oppression—Starving to death.

Jul. 26.—Robert M^c^coule, in Weſter Kindrogine; Robert Glas, thair; and Johnne Bowy M^c^kerra Dowy, in Straloche.

Dilaitit for Uſurpatioun of our ſouerane lordis authoritie, in taking of vmq^le^ Allaſter M^c^gilliemule, in Innerridrie, ane ſimple puir man, furth of the duelling hous of Johnne Roy M^c^gilliemule, vpone the landis of Bordland, within the ſcherefdome of Perthe, binding him hand and fute, and cayreing him, as ane captiue and priſſoner, with thame to the Caſtell of Blair, in Athole, and ſtryppit him naikit of his claithes, and thaireftir caſting him in the pit of the ſaid Caſtell, quhair, in the deid tyme of winter, viz. in December laſt, he fameiſchet with hunger and cald, eftir he had remanit foure dayis and foure nichtis thairintill: And thaireftir cayreing him out of the ſaid pitt to ane gibbet (being deid) vpone the landis of Blair, quhair thay hang him vp as ane malefactour, but power or commiſſioun gevin to thame, or ony preceiding tryell tane of his guiltines of ony cryme.

The Juſtice ordanit Johnne Ferguſſone of Belnacult, in Straloche, as cautioner and ſouertie, to be vnlawit for nocht entrie of ilk ane of the ſaidis perſonis, in the pane of ane hundreth merkis: And ſiclyk, that thay ſall be denuncet rebellis and put to the horne, and all thair moveabill guidis to be eſcheit, &c.

Hurting and Wounding—Demembration.

Nov. 3.—Johnne Stewart of Hulreid; James Blaikwoid, his ſervand; and Johnne Pollok, ſone to Johnne Pollok, in Caldcoittis.

Dilaitit of airt and pairt of the crewall Hurting and Wounding of Johnne Allanſone, ſone to Andro Allanſone, in Waterfute, in his heid, be geving to him of ſevin bludie woundis thairintill, tua crewall woundis in his ſchoulderis and airmes: As alſo, of diſmembring him of his thombe and thre fingeris of his left hand; committit vpone the landis of Gorballis, pertening to Sir George Elphingſtoun of Blytheſwoid, kny^t^, in his cuming frome Glaſgow to his fatheris hous, in Watterfute, in the moneth of Junij laſt; vpone ſet purpois, prouiſioun, and ffoirthocht ffellonie.

Persewar, Johnne Allaneſone.

Prelocutouris in defence, Mr Thomas Hoip, Mr James Hammiltoun.

It is allegit be Mr Thomas Hoip, as prelocutour for Johnne Stewart of Hulreid, that the Dittay can nocht be put to ane Aſſyſe aganis the ſaid Johnne, nor his men, becaus per Legem, *ſi quis in rixa*, &c.; quhair ane perſone, callit for ane cryme and is fugitiue thairfoir, the remanent perſones, his allegit complices, enterand, can nocht be tryit be ane Aſſyſe, or perſewit for the ſamyn: As alſo, he takis inſtrumentis of that poynt of the Dittay, beirand the fact lybellit to be committit vpone foirthocht fellonie. It is forder allegit be Mr Thomas, that the Dittay is nawayis relevant to pas to ane Aſſyſe, for Diſmembring, ſeing the perſewar wantis nocht ane member, bot onlie his thombe and tua fingeris, *quia digitus non eſt membrum, ſed tantum pars membri.*

Mr James Hammiltoun, as prelocutour for Johnne Pollok, takis inſtrumentis, that the perſewar is willing to pas fra the ſaid Johnne Pollokis perſute *ſimpliciter*, as altogidder innocent of the cryme lybellit; and proteſtis, in caice he perſew nocht Pollok, that the perſewaris cautioneris be vnlawit: And thairfoir, in reſpect of Pollokis innocencie, he offeris him to the tryell of ane Aſſyſe. Takis inſtrumentis alſo of the perſewaris declaratioun, beirand that he nevir ſaw the ſaid Johnne Stewart and remanent perſones on pannell befoir his cuming to the grund of Gorballis, that day of his hurting thairupoun; as alſo, that Johnne Stewart ſaid theaſe wordis at that tyme, 'It is ane mervellous matter we can nocht get James Pollok and Johnne Allanſone red!'

THE Juſtice repellis the allegeances aboue writtin, concerning the Law allegit be Mr Thomas Hoip, and concerning the diſmembring, in reſpect of the Dittay: And Ordanis the ſamyn to be put to ane Aſſyſe.

VERDICT. The Aſſyſe, all in ane voce, ffand the ſaidis Johnne Stewart, James Blaikwood, and Johnne Pollok to be Clene, innocent, and acquit, &c.

Slaughter.

NOV. 17.—JAMES MURE, in Dalmahoy,[1] and Thomas Aikman, thair.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Johnne Weir, in Dalmahoy; committit with ſtanes, rungis,[2] and vtheris wappones *invaſiué*, vpone the laſt day of September laſtbypaſt, vpone ſet purpois, prouiſioun, and foirthocht fellony.

PERSEWARIS, Margaret Wynrahame, the relict; Thomas and William Weir, brether.

PRELOCUTOUR in defence (for Thomas Aikman), Mr Robert Lermonthe.

VERDICT. The Aſſyſe, all in ane voce, ffand the ſaid *Thomas Aikman* to be Cleane, innocent, and acquit: And ſiclyk, that the ſaid *James Mure* is Giltie, culpable, and convict of the ſaid ſlauchter.—SENTENCE *againſt Mure.* To be tane to the Mercat croce of Edinburghe, and thair his heid to be ſtrukin frome his body; and all his moveable guidis to be eſcheit, &c.

[1] See Jun. 14, 1620. [2] Cudgels; staves.

Slaughter.

Dec. 1.—Johnne Broun, tailȝeour, hantand[1] in Craufurdmure.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^le James Williamſone, in Glengeich; committit the xxvj day of November laſtbypaſt, within the duelling hous of Johnne Gibſone, elder, in Craufurdtoun, be hurting him with ane ſuord in the heid, airmes, and vtheris pairtis of his body; quhairof, vpone the morne thaireftir, being the xxvij day of November, at tuelf houris in the day, he deceiſſit.

Persewaris, Symone Williamſone, burges of Edinburghe, and Robert Williamſone, brethir to the defunct; James Williamſone, brother-in-law; Sir Williame Oliphant, kny^t.

Assisa.

Mathow Bailȝie, of Littillgill,	Thomas Johnnſtoun of Beirholme,
Mr James Bailȝie, ſone to Mathow,	Williame Tailȝefeir of Herklaw,
Johnne Makmath of Corſbank,	Johnne Vmphray in Glenmuklek.[2]

The ſaid Robert Williamſone, brother to the defunct, ſuoir the Dittay to be of verritie: Quhairvpoun my lord Aduocat aſkit inſtrumentis; and proteſtit for Wilfull Errour aganis the Aſſyſe, gif thay acquit.

Verdict. The Aſſyſe, all in ane voce, be the declaratioun of the ſaid Mathow Bailȝie, chanceller, ffand the ſaid Johnne Broun to be ffylet, culpable, and convict of airt and pairt of the ſaid crewall Slauchter.—Sentence. To be tane to the Mercat-croce of Edinburghe, and thair his heid to be ſtrukin frome his body; and all his moveabill guidis to be eſcheit, &c.

Slaughter.

Dec. 15.—Sir James Maxwall of Calderwoid, kny^t; Alexander Lyndſay of Dunrod; Johnne Lyndſay, his brother naturall; and James Maxwall, ſone to Williame Maxwall of Newlandis.

Dilaitit of airt and pairt of the Slauchter of vmq^le Alexander Lekkie of that Ilk; committit in September 1601 yeiris.

Persewaris, Alexander Lekkie of that Ilk, as ſone; Adame Cuninghame of Markinſche, the ſpous of Euphame Maxwall, relict of the ſaid vmq^le Alexander, for his intreis; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our ſouerane lord.

Prelocutour in defence, Mr Thomas Hoip, Aduocat.

The Juſtice, conforme to ane Warrand of the Secreit Counſall, direct to him, quhairof the tennour followis:

Justice, Juſtice Clerk, and ȝour deputis. Quhairas the fyftene day of December inſtant is appointit to Sir James Maxwell of Calderwoid, kyn^t, Wm Maxwall of Newlandis, James, J^n, and James Maxwallis his ſones, Alex^r Lyndſay of Dunrod, and James Wauchope in þe Airdis, ffor þair compeirance befoir ȝow, to vnderly the lawis for the Slauchter of vmq^le Alex^r Lekkie of þat Ilk: Nochtwithſtanding, for certane cauſſis moveing ws, it is our will, and we Command ȝow to continew þe ſaid dyet, vntill the

[1] Dwelling, but having no fixed residence. [2] The rest of no note.

ſextene day of Januar, in the ȝeir of God I^m.Vj^c. tuentie tua ȝeiris: And that ȝe tak new cautioun of thame, conforme to the ordour. Quhairanent thir preſentis ſall be ȝour Warrand. AT ED^R, the tuelf day of December, 1620.

AL. CANCELL^S. MAR. MELROIS. NITHISDAILL. LAUDERDAILL. CARNEGY.

Continewis this dyet to the ſaid xvj day of Januar, in anno foirſaid.—Sir Alexander Hammiltoun of Innerweik, kny^t, elder, and Alexander Levingſtoun of Belſtane, become pleges and ſouerteis for the entrie of the ſaidis Sir James, &c.

(Jan. 16, 1622.)—SIR James Maxwall compeirit, and perſonallie producet ane WARRAND of the Lordis of Secreit Counſall, proceiding vpone ane Supplicatioun gevin in by thair Lordſchippis; quhairof the tennour followis.

MY LORDIS OF SECREIT COUNSALL, vnto ȝour L. humlie meanis[1] and ſchawis, we ȝour ſeruitouris, *Sir James Maxwall of Calderwoid*,[2] ſone to vmq^le *Williame Maxwall of Newlandis, Alex^r Lyndſay of Dunrode*, and *Jo^n Lynḋſay*, his brother naturale, That quhair, the ſextene day of Januare nixtocum is appointit to us for our compeirance befoir his Maieſteis Juſtice, to vnderly the Law for the Slauchter of vmq^le *Alex^r Lekie of that Ilk*, at the quhilk day the Juſtice intendis to proceid in this matter; albeit it be of verritie, that be þe mediatioun and travellis of ſome weill affectit Noblemen, Barrones, and Gentilmen, commoun and indifferent[3] freindis to both us pairteis, who hes delt and travellit betuix us, for bringing of this vnhappie ffeid, whilk hes bene of ſo long continuance betuix our Houſſis, to ſome termes of aggrement and reconſiliatioun: Thay broght þe matter to this poynt, that I, þe ſaid *Sir James*, ſall ſuperceid and continew the proſecutioun and following out of þe actioun of Reductioun, quhilk I haif preſentlie in dependance befoir þe Lordis of Counſall and Seſſioun, aganis þe ſaid *Laird of Lekkie*, and that I ſall ſuffer the ſame to reſt and ſleip[4] till þe ſaid ſaxtene day of Januar nixtocum; and that the Criminall dyet foirſaid, appointit for our Tryell befoir þe Juſtice, ſall be continewit till Witſonday nixt; to the effect, that in this meane tyme, forder travellis may be tane for bringing of the ffeid and querrell betuix us to ane more happie and finall concluſioun: AND with this appointment of freindis, bothe we pairteis reſtit weale ſatisfeit and content. THAIRFOIR we beſeik ȝour Lo. to geve command to þe Juſtice, Juſtice clerk, and þair deputies, to continew þe dyet foirſaid, appointit for our compeirance befoir thame, to vnderly the Law for þe Slauchter, vnto þe ſaid terme of Witſonday nixtocum; and that þai diſpenſe with our perſonall compeirance, and tak new cautioun for us, conforme to þe ordour: And to diſcharge thame of all proceiding aganis us in the mean tyme, and of thair offices in that pairt, quhill þe ſaid terme of Witſonday: Whairanent thir preſentis ſall be þair Warrand. And ȝour Lordſchipis anſuer. [*Followis the Lordis delyuerance.*] APUD ED^R, *quarto Decembris*, 1621, *fiat ut petitur*, to the xix day of Junij nixtocum: Becaus *the Erle of Mar*, being perſonallie preſent, teſtifeit þe conſent and appointment within writtin.

AL. CANCELL^S.

For obedience of the quhilk Warrand, the Juſtice continewis this dyet in the ſame forme, force, and effect, with all tryell of the pannell for the Slauchter aboue writtin, to the ſaid xix day of Junij, &c.—Sir George Elphingſtoun of Blytheſwoid, kny^t, became ſouertie for the entrie of the ſaid Laird of Calderwoid, &c.

(Jun. 19, 1622.)—THE Laird of Calderwoid producet his Maieſteis Letter following:

[1] Complains. [2] It is likely the following words are omitted in the record, through a clerical error: 'Kny^t, James Maxwall,' ſone, &c. [3] Disinterested. [4] When no proceeding takes place in suits before the Court of Session for *year and day*, the process is technically said to *fall asleep*, and is revived by a Summons of *Wakening*, &c.

James R.

Trustie and weilbelouit, We greit ȝow weill. Whair as, We be crediblie informet that *Sir James Maxwall of Calderwoid, knyt*, and *Alexander Lindſay of Dwnrod*, with thear complices, ar ſummond, to vnderly our Lawis, for þe Slauchter of vmq^le^ *Alexander Lecky of that Ilk*, alleadged committed be thame, We ar well pleaſed to grant vnto the ſaid *Sir James* a Reſpitt for the ſame, during the ſpace of certane monethis eftir the dait heirof: And thairfoir haif thought goode, by theſe preſentis, to will and requyre ȝow not to medle in any wyſe, nor to tak cognitioun of the ſaid cauſe, till the fyft day of October nixt. Wherein We expect ȝowr conformitie to our pleaſour. Gevin at our Court of Grenewiche, the firſt of Junij, 1622.

The Juſtice continewis, &c. Sir Johnne Hammiltoun of Lettrik, and James Maxwall of Kirkconnell, cautioneris, &c.

Prelocutouris in defence, Joſeph Myller, Aduocat; Archibald Hammiltoun, Commiſſar of Lanark.

(Oct. 5, 1622.)—Joseph Myller producet tua ſeuerall Teſtimoniallis, the ane ſubſcryuit be the Miniſter of Lanark, and dyuerſe elderis of the Seſſioun of that Kirk; and the vther ſubſcryvet be the Miniſter of Carlouk, and certane of the elderis of that Kirk, teſtifeing the deceiſe of Sir James Maxwall of Calderwoid, kny^t^: And vpone the productioun thairof aſkit inſtrumentis.

The Laird of Dunrod preſentit to the Juſtice ane Letter of his Maiesteis, quhairof the tennour followis.

To o^r^ truſtie and weilbelouit, o^r^ Juſtice, Juſtice clerk, and þair deputeis whatſoeuir.

James R.

Truſtie and wellbelouit, We greete ȝow well. Whairas, We haue bene pleaſed to write to o^r^ Counſell, willing thame to employ their beſt meanes, for reconciliatioun of *Sir James Maxwell of Calderwoid* and *Alexander Lekkie of that Ilk*: We haif lykwayis thocht by theſe preſentis to will and requyre ȝow nocht to proceid in the criminall actioun intendit aganis the ſaid *Sir James Maxwall* and his complices, for the Slauchter of vmq^le^ *Alexander Lekkie of that Ilk*, till ȝe ſall vnderſtand by o^r^ ſaid Counſell that þai haif gevin vp all forder deilling in that matter. So, exſpecting ȝo^r^ conformitie to this o^r^ pleſ^r^, we bid ȝou fare weill. Gevin at Windeſore, the ſeavinthe day of Auguſt, 1622.

Conforme to the quhilk directioun of his Maieſtie, the Juſtice deferris all proceiding aganis the pannell.

The ſaid Johnne Lyndſay diſaſſentis to the ſaid continuatioun, and affirmes him ſelf to be innocent of the ſaid Slauchter; and thairfoir offeris him ſelff preſentlie to the tryell of the Law for the ſamyn.—The Juſtice Ordanis him, with the remanent defenderis vpone pannell, to find cautioun. James Lyndſay of Scheillis, and Alexander Levingſtoun of Belſtane, become cautioneris, &c.

[*Mr Robert Fairlie, Juſtice-Depute.*]

Taking captive King's free lieges—Cruel oppression—Murder, &c.

Feb. 7, 1621.—James Park in Cathkyn, and George Park in Weſter Gremlear, his brother.

Dilaitit of airt and pairt of the Taking of vmq^le^ Williame Knox, in Cathkyn, furth of his duelling hous, vnder ſilence of nycht, and with cudgellis and rungis beſting and dinging him in the breiſt, ſydis, bak, and bellie; thairby breking

and bruſeing his haill intrallis and nobill pairtis within him, ſetting thair feit betuix his leggis vpone his ball-cod,[1] and forceing thairby his ſtanes to loup vp in his liſkis;[2] binding him thairefter with ane coird, or hair-tedder, to ane horſe and ane ſled,[3] and cayreing him with thame as ane captiue and priſſoner to the toun of Hammiltoun: Off the quhilkis hurttis and dedlie woundis, he deceiſſit, in the moneth of Januar; the ſamyn being done to him in the moneth of October of beſoir, in the yeir of God I^{m}.V^{c}.lxxxxvj yeiris.

PERSEWARIS, Johnne Knox, as ſone; Sir Williame Oliphant, kny^{t}.

PRELOCUTOURIS in defence, Mr Thos Hoip, Mr Ja^{s} Hammiltoun, Mr Lueis Stewart, (Advocates.)

It is allegit be the pannell, that the Dittay contenis tua ſeuerall crymes; the firſt, for taking and apprehending of his Maieſteis frie lege but[4] Commiſſioun, quhilk is treſſonable; the vther cryme, for Murthour and Slauchter of him, in in maner lybellit. As to the firſt cryme, quhilk inferris the cryme of Treſſone, *non relevat*, becaus, taking without impriſſoning *in privato carcere*, and detening him thairin, *per ſpacium viginti quatuor horarum*, can nocht, be[5] the law, infer *penam privati carceris*. And as to the Murthour lybellit, *non relevat* to pas to ane Aſſyſe, except it war condiſcendit, at quhat tyme he contractit the deidlie ſeiknes, eftir the geving of the ſtraikis quhairupoun daith followit, as is alleggit in the lybell. My lord Aduocat conioynes the tua crymes lybellit, and concludes thairin only *penam capitis* to be inflictit vpone the committeris; and thairfoir deſyres the Juſtice to put the haill lybell *coniunctim* to the knawlege of ane Aſſyſe.—The perſewar, Johnne Knox, declairis that he will nocht perſew at this tyme, becaus the ſpeciall perſones that ar ſummoned, and beſt knawis the treuth of the pannellis giltines, ar nocht preſent: And thairfoir, deſyres that the matter may continew to ane fyftene dayis wairning, and the pannell put vnder new cautioun.—The pannell diſaſſentis to the ſaid continuatioun; and in reſpect, thair is ane ſufficient number of Aſſyſe preſent, all ſummoned be the perſewar, offeris thame ſelffis to the tryell of the law for the haill crymes lybellit; quhairof thay declair thame ſelffis to be altogidder innocent: And proteſtis, in reſpect of thair former offer, that thay be nawayis trubillit or perſewit for the ſaidis allegit crymes, in ony tyme cuming.

THE Juſtice continewis this matter to ane fyftene dayis wairning; and ordanis the pannell to find cautioun, &c. Williame Anderſone, portioner of Littil Govane, became cautioner, &c.

[*Mr Alexander Coluile, Juſtice-Depute.*]

Usurping King's authority—Taking captive, &c.

Feb. 9.—RICHARD GRAHAME of Hoſpitalſcheillis, and Robert Merſar, meſſinger in Abirdene.[6]

[1] Testes. [2] Reins. [3] Sledge, or cart without wheels. [4] Without. [5] By.
[6] Cautioners, 'George Erle of Marſchell, and James Garioche of Kinſtair.'

Dilaitit for cuming to Patrik Farquhar, burges of Abirdene, his duelling-hous thair, and maiſt violentlie, but ordour of Law,[1] or concurrance of the Magiſtratis of the ſaid burgh, and without ony Commiſſioun or vther Warrand, putting violent handis in the perſone of the ſaid Patrik Farquhar, taking him furth of his ſaid hous; and thairfra, cayreing him, as ane captiue and priſſoner, to the ſaid Richerd Grahames Hous of Overcraig: As alſo, for cayreing him to the priſſone of Stanehyve, quhairin he was keipit be the ſpace of tuentie dayis: Lyk as, he was keipit and detenit in the ſaid Richerd Grahames Hous, *tanquam in privato carcere*, be the ſpace of tuentie foure houris; vſurpeing thairby our ſouerane lordis authoritie vpone thame: And ſic lyk, for tranſpoirting him to the duelling hous of Mr Williame Reid in Cowie, quhairin he was keipit in ſtrait firmance the ſpace of vther xxiiij houris: Vſurpeing thairby our ſouerane lordis authoritie vpone thame.

Prelocutouris in defence, Mr James Oliphant, Mr Roger Mowat, Aduocattis.

The ſaid Patrik Farquhar declairit, that the ſaidis Letteris war altogidder raiſit but[2] his warrand, and by[3] his knawlege; and without ony informatioun gevin be him to our ſouerane lordis Aduocat, or to the ſaid James Keyth,[4] or ony vther thairintill: And thairfoir, he renuncet all actioun Criminal or Ciuile that he had or could allege aganis the ſaid Richard and Robert, and paſt *ſimpliciter* fra thair perſute, as altogidder frie and innocent thairof.—My lord Aduocat declairis, that thair is colluſioun and ſecreit aggrement betuix Patrik Farquhar and the perſones on pannell; and deſyres the pannell thairfoir to be put vnder new cautioun, for thair compeirance of new agane, vpone xv dayis wairning, for his Maieſteis intereis allanerlie.—Johnne Grahame, indueller in Edinburgh, becomes cautioner to the above effect.

My lord Juſtice Ordanit na letteris to be direct furth aganis the pannell, at the inſtance of the ſaid Patrik, for the crymes foirſaidis, in ony tyme cuming, in reſpect of his former declaratioun.

Slaughter.

Feb. 23.—Johnne Bellenden, indueller in Edinburghe.

Dilaitit of airt and pairt of the Slauchter of vmq^le James Dalmahoy, burges of Edinburgh.

Persewaris.

Agnes and Helene Dalmahoy, ſiſteris; Sir Johnne Dalmahoy of that Ilk, kyn^t; Andro Ker of Ȝair.

Prelocutouris in defence, James Borthuik of Newbyres, Mr Laurence McGill.

The Justice, of conſent of pairtie, continewis the dyet to the ſevint of Marche

[1] Without legal warrant. [2] Without. [3] Beside; past; without; contrary to. [4] Of Harviestoun, cautioner for producing the Letters duly executed against the pannel.

nixtocum. And ordanis the pannell to be tane bak to waird, thair to remane quhill the ſaid day.

Mar. 7.—CONTINEWIS this matter to Fryday nixt, the nynt *inſtantis.*

Mar. 9.—THE perſewaris paſſis fra the perſute of the pannell, *pro loco et tempore.*

Slaughter.

Mar. 30.—MR JAMES BAILZIE, ſone to Mathow Bailzie of Littilgill.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ James Dalmahoy, merchand burges of Edinburgh.

PRELOCUTOURIS in defence, Mathow Bailzie of Littilgill, Mr James Hammiltoun.

The ſaidis Mathow, and Mr James, declairit, that Mr James Bailzie, his ſone, the tyme of the geving of the charge to him, for his compeirance, was and is as yit hevielie diſeaſit with ſeiknes, that he is nocht able to travell to the keiping of this dyet, &c.

Johnne Loverance, Miniſter at Robertoun being ſolemplie ſuorne, declairit, that he is Miniſter at the Kirk of Robertoun, and within this thre dayis viſſeit Mr James Bailzie within the parochin, quhair he was lying bedfaſt, heavilie diſeaſet with ſeiknes, and nawayis of habilitie to travell, vpone horſe or fute, to the keiping of this dyet; as he ſould anſuer to the grit and Almychtie God. —*Johnne Dunſyre* in Robertoun, alſo ſuorne, is conforme to the ſaid Johnne Loverance, Miniſter.—*Mungo Inglis* thair, lykwayis deiplie ſuorne, depones conforme to the Miniſter.

THE Juſtice ordanit cautioun of new agane to be ffund for the ſaid Mr James Bailzie, that he ſall compeir the thrid day of the nixt Juſtice-air of Lanerk, or ſoner, vpone xv dayis. The ſaid Mathow becomes cautioner.

[*Mr Robert Fairlie, Juſtice-Depute.*]

Murder under truſt, credit, and assurance.

Apr. 13.—GEORGE ERLE OF CAITHNESS, and James Sinclair in Diran.

Dilaitit of airt and pairt of the crewall and treſſonabill Murthour and Slaughter vnder truſt, credit, and aſſureance of vmq^le^ Thomas Lyndſay in Scraibſter in Kaithnes; committit be thame and thair compliceis, in forme and maner ſpecifeit in the Letteris.

Robert Monro of Aldie, Commiſſar of Kaithnes, as brother on the mother ſyde, to the ſaid vmq^le^ Thomas, produceit the Letteris deulie execute and indorſate vpone the ſaid Erle and James Sinclair, be the quhilkis, thay and ather of thame ar denuncet rebellis and put to the horne, for nocht finding of cautioun, to haif compeirit befoir the Juſtice or his deputis this day.

THE Juſtice, vpone the productioun of the ſaidis Letteris deulie execute,

indorſat, and regiſtrat, adjudget the ſaid Erle and James Sinclair, in reſpect thairof, and of thair nocht compeirance perſonallie this day, to be ffugitiues fra his Maieſteis lawis for the ſaid treſſonabill Murthour, as culpable and fugitiue thairfoir.

[*Mr Alexander Coluile, Juſtice-Depute.*]

'Forceing'—Rape.

Jun. 27.—James M^c^Nacht in Igiſzaird, and Thomas Weir in Gairdingholme-fute.

Dilaitit of the ſforceing of vmq^le^ Jonet M^c^rone, ſervand for the tyme to Thomas Weir in Gairdingholme-fute, and abuſeing hir, in the moneth of November, 1620 yeiris, in ſic ſoirt, that within tuentie dayis thaireftir ſcho deceiſſit.

Persewar, Williame Campbell, couſing-germane to the defunct.

Prelocutouris in defence, Mr Lueis Stewart, and Adame Cuninghame, (Advocates.)

The pannell deſyres to vnderſtand the perſewaris entreis to perſew; and that he declair how neir of kyn he is to Jonet M^c^rone.—The perſewar declairis he is couſing-germane to the ſaid vmq^le^ Jonet, viz. ſcho was his father-ſiſter dochter; and thairfoir hes guid intreis to perſew.—It is allegit be the pannell, that he can nocht be eſtimat ane lauchfull perſewar, becaus the perſewaris father was the defunctis baſtard-brother; and ſa, of the Law, can nocht perſew, his father being baſtard; the verritie quhairof referris to the perſewaris ayth: Quha declairit the allegeance to be of verritie.

The Justice, in reſpect thair was na lauchfull perſewar to inſiſt in this perſute, Ordanis the dyet to deſert.

The pannell takis inſtrumentis thairupoun, and affirmes that thai ar altogidder innocent of the crymes lybellit; and gif ane lauchfull perſewar, ather for the parteis or the Kingis entreis, war preſent, thay wald maiſt willinglie offer thame ſelffis to the tryell of the law for the ſaidis crymes; and diſaſſentit, *ſimpliciter*, fra ony continuatioun, without ony exceptioun to be proponit aganis ony lauchfull perſewar or perſones of Aſſyſe, being honeſt and vnſuſpect perſones; proteſting, in the meane tyme, for thair cautioneris relief, fund for thair compeirance this day.

Slaughter.

Jul. 19.—Henrie Baird, at the Mylne of Mukard.

Dilaitit of the crewall Slaughter of vmq^le^ Robert Huttone, duelland within the parochin of Mukard, beſyde Caſtell Campbell, be caſting of ane otter-ſtalff, with ane tua-granet fork of irne at the end thairof, at the ſaid vmq^le^ Robert, quhilk peirſit him in the bellie, quhairof he immediatlie thaireftir deceiſſit; committit vpone the nynt of July inſtant, vpone ſet purpois, prouiſioun, and ffoirthocht ffellonie.

PERSEWAR, Johnne Huttone, at the Kirk of Mukard, as brother to the defunct.

The pannell confeſſis the fact, and craves God mercie.

VERDICT. The Aſſyſe, all in ane voce, ſſand the ſaid Henrie Baird, conforme to his awin Judiciall Confeſſioun, to be ffylet, culpable, and convict of airt and pairt of the ſaid Slauchter.—SENTENCE. To be tane to the Caſtell-hill of Edinburgh, and thair his heid to be ſtrukin fra his body; and all his moveable guidis to be eſcheit, &c.

Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.

Jul. 20.—WILLIAME DOUGLAS of Drumlangrig; James Douglas of Mouſſell, his brother; Johnne Douglas of Killievarrene, his brother naturall; Robert Greir, younger of Lag; and others.[1]

Dilaitit for contravening his Maieſteis Actis of Parliament, in making of convocatioun of his hienes legis: AND beiring and weiring of hagbutis and piſtolettis: AND for airt and pairt of the Slauchter of vmq^le Thomas Coupland in Caſchogill: AND demembring of Robert Douglas, ſone to Sir Robert Douglas of Caſchogill, kny^t, of his left lug:[2] Committit in Maij laſtwas, vpone the tuelf day thairof, at the Moſs of Caſchogill.

PERSEWARIS, Margaret Corſbie, the relict; Williame, Robert, and Thomas Couplandis, as ſones; and . . . . . Coupland, as dochter to the ſaid vmq^le Thomas; Sir Robert Douglas of Caſchogill, kny^t, as father to Robert Douglas, and maiſter to vmq^le Thomas.

PRELOCUTOURIS, Mr Thomas Hoip; Mr Thomas Nicolſone, younger; and James Dowie, wryter.

Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.

Jul. 20.—SIR ROBERT DOUGLAS of Caſchogill, kny^t; Robert Douglas, his ſone; Johnne Paterſone, in Caſchogill; Thomas Paterſone, thair; Williame Coupland, thair; Hob Coupland, thair; Mathow Cowane, thair; and twenty-ſeven others.

Dilaitit for contravening of the Actis of Parliament, in making of convocatioun of his Maieſteis legis; beiring and weiring of hagbutis and piſtolettis; and invaiding of the Laird of Drumlangrig, his brother, and remanent perſewaris, with ſchottis of hagbutis and piſtolettis; committit at the Moſs of Knockconnie, pertening to Dauid Douglas, heritour thairof, vpone the tuelf day of Maij laſt.

[1] The rest of the pannels were, 'Duncane Hunter of Ballagan; James Johnnſtoun of Lochhous; James Johnnſtoun, callit *Braikinſyde*, James Johnnſtoun, callit *Croftheid*, James Douglas, and Robert Grahame, all four ſervandis to the ſaid James of Lochehous; Archibald Douglas, ſervand to the Laird of Mouſſell; Robert Creichtoun, ſone to . . . . Creichtoun of Craufurdtoun; Thomas Bell, ſone to *Reidcloke;* James Douglas, callit *in Glenmeid;* Chriſtie Airmeſtrang in Bigholme, his ſone in law; Andro Hunter in Auchinbaithe; James Douglas, Thomas Mairtene, Johnne Paterſone, callit *the ſukler*, all ſervandis to the ſaid Laird of Drumlangrig; Hob Hunter in Crarieknow; and Johnne Rig, meſſinger.' [2] Ear.

Persewaris, Williame Douglas of Drumlangrig; James Douglas of Mouſſell, his brother; Johnne Douglas of Killievarrane; James Johnnſtoun of Lochehous; Robert Dalȝell, ſone naturall to Sir Robert Dalȝell of Eliok, kny^t^; Sir Williame Oliphant of Newtoun, kny^t^.

Ane Warrand was producet to my lord Juſtice, quhairof the tennour followis.

Justice, Juſtice Clerk, and ȝour deputis; fforſamekill as the tuentie day of July inſtant is ſet and affixed for perſute of *Williame Douglas of Drumlangrig*, and certane his ſpeciall freindis and kynſmen befoir ȝow, for þe ſlauchter of vmq^le^ *Thomas Coupland*, with hagbuttis and piſtolettis; as alſo, for perſute of *Sir Robert Douglas of Caſchogill*, and certane his freindis and pairt-takeris, for making of convocatioun of his Maieſteis legis, and beiring, weiring, and ſchuiting of hagbutis and piſtolettis, contrair his Maieſteis Actis of Parliament; as the Letteris, *hinc inde*, raiſit be ather pairtie thairintill, beiris: And becaus, be the mediatioun of freindis, the ſaidis actiones ar liklie to pak up and agrie, and that no forder truble be had amangis þame þairintill: It is þairfoir our will and pleſour, that ȝe continew the ſaidis dyettis to the thrid day of þe nixt Juſtice-air of the Scherefdome quhair þe ſaidis pairteis duellis, or ſoner, vpone ſyftene dayis wairning; diſpenſand with thair nocht compeirance befoir ȝow this day, and takand new cautioun for þe haill perſones re-entrie contenit in the Letteris, to that effect, vnder the panes contenit in the Actis of Parliament. Quhairanent thir preſentis ſall be to ȝow ane ſufficient Warrand. Subſcryuit at Edinburgh, the xx day of July, 1621.

Hammiltoun. Al. Cancell^s^. Mar. Melros.

The Juſtice continewis the ſaidis tua dyettis to the thrid day of the nixt Juſtice-air of the Scherefdome of Dumfreis, quhairin the haill perſones duellis, or ſoner, vpone ſyftene dayis.

Compeirit perſonallie . . . . . Douglas of Caveris, Scheriff of Teviedaill, and become ſouertie for the ſaid Williame Douglas of Drumlangrig: And ſiclyk, Johnne Wilſone of Croglene, James Menȝies of Enoche, and Malcolme Dalrumpill of Enoche, ſouerteis, conjunctlie and ſeuerallie, for Sir Robert Dalȝell of Eliok, James Douglas of Mouſell, &c., that thay ſall compeir, &c.—And on the vther pairt, compeirit Sir Williame Douglas, younger of Caſchogill, kny^t^, and become plege and ſouertie for his father, and haill remanent defenderis, &c.

[*Mr Robert Fairlie, Juſtice-Depute.*]

Slaughter—Wearing of Hagbuts and Piſtolets, &c.

Aug. 24.—Capitane James Johnnstoun of Thornik.

Dilaitit of the felloun and crewall Slauchter of vmq^le^ Williame Johnnſtoun, brother germane to Robert Johnnſtoun of Wamfray: And for contravening of the Actis of Parliament, in beiring, weiring, and ſchuiting of hagbutis and piſtolettis, and ſlaying the ſaid vmq^le^ Williame Johnnſtoun thairwith; and remanent crymes contenit in the criminall Letteris.

The Juſtice ordanit James Johnnſtoun of Braikanſyde, cautioner for the ſaid Capitane, to be vnlawit and amerciat, for nocht entrie of the ſaid Capitane, in the pane of ffyve hundreth merkis: And ſiclyk, that the ſaid Capitane James, for his nocht compeirance, ſall be denuncet rebell, and put to the horne; and all his moveabill guidis to be eſcheit, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

Slaughter in Single Combat, or Duel, while in Foreign Service.

[THE following Trial is one which possesses considerable interest and importance, as well from the light which it throws on the application of the LAWS OF DUELLING, in Scotland and in the Low Countries, as from the rank and situation of the parties implicated. *Captain Harry Bruce*, who had subsequently been employed to superintend the martial exercises of CHARLES, PRINCE OF WALES, afterwards the unfortunate KING CHARLES I, was rigorously pursued, by the vindictive and mercenary spirit of the relatives of *Captain John Hamilton*, in the Supreme Criminal Tribunal of Scotland, after he had long before been honourably acquitted by Court Martial in Flanders—under the impression, no doubt, that they would either extort a large sum of money from this new Court favourite, or procure his ruin or death. The DUEL OF SINGLE COMBAT referred to in this case, and into which *Bruce* had been dragged by the rashness and insolence of his antagonist, had taken place no less than about *seventeen years* previous to those proceedings!

The reader may here be referred to the Case of "Capitan Johne Rig, Archeour of the Gaird of France," in a former part of this Collection, Vol. II., p. 382.]

NOV. 14.—CAPITANE HARIE BRUCE, feruitour to THE PRINCE his Hienes.

Dilaitit of airt and pairt of the Slaughter of vmq^le^ Capitane Johnne Hammiltoun; committit in ane Singular Combat, in the Law Countreyis of fflanderis, in *anno* I^m^.Vj^c^. and fyve yeiris.

PERSEWARIS, Margaret Hammiltoun, as fister; Sir Williame Oliphant of Newtoun, kny^t^.

PRELOCUTOUR in defence, Mr Robert Foullis.

The pannell producet ane WARRAND and command of the Lordis of Secreit Counfall, quhairof the tennour followis.

ACT OF THE LORDS OF PRIVY COUNCIL.

AT EDINBUR^T^, the threttene day of November, the ȝeir of God I^m^. fex hundreth tuentie ane ȝeiris. ANENT the Supplicatioun prefentit to the Lordis of Secreit Counfall be *Capitane Harie Bruce*, feruitour to THE PRINCE HIS HIENES, makand mentioun, that quhair, the xiiij day of November inftant is appointit vnto him, vpone the complent of *Margaret Hammiltoun*, as fifter, with the remanent kyn and freindis of vmq^le^ *Capitane Johnne Hammiltoun*, ffor his compeirance befoir the Juftice or his deputis, in the Tolbuthe of Ed^r^, to vnderly the law for the Slauchter of þe faid vmq^le^ *Capitane Johnne Hammiltoun*, committit be the faid *Capitane Harie*, in ane Singular Combat, in *the Law Countreyis of fflanderis*, fome fevintene ȝeiris ago; lyk as, the Juftice intendis to proceid aganis him, in that matter, althoght it be of verritie, that gif refpect be had to the nature and qualitie of the perfute, and to the circumftances of the Slauchter, quhan, quhair, and vpone quhat occafioun it fell out, it will be fund that the tryell thairof can no way be propper nor competent befoir the faid Juftice, nor in no vther Judicatorie within this Kingdome; becaus the faid Slauchter was committit outwith his Maiefteis dominiones, within the territoreis of *the Eftaitis of the Law Countreyis*, in ane Singular Combat, quhairvnto the faid *Capitan Harie* was vrged and drawin by the gritteft refpectis of credeit and reputation quhairwith a Gentilman could be affailȝeid: AND howeuir the faid *Capitane Johnne Hamiltoun* and he be borne Scottifmen, and in that refpect obleift in all fubmiffiue deuteis of allegeance to thair naturall Soverane, ȝit the tyme of that vnhappie flauchter, and dyuerfe ȝeiris befoir, thay war bothe in actuall feruice, and fuorne *Officeris* to the faidis *Eftaitis*, and alfe far fubiect to thame and to thair Judgement and Jurifdictioun, in all matteris, alfweill impoirting lyfe and death, as guidis and geir, as gif thay had

bene thair naturall-borne ſubiectis: And thair was no difference betuix thame and the natines of the cuntrie, in pointis of ſubiectioun to the ſaidis *Eſtaitis* and þair lawis, the ſaidis *Eſtaitis*, at that tyme, being þair ſouerane Judges in all matteris, of quhatſumeuir qualitie, occurring within thair boundis. And twitcheing the matter it ſelff, the treuth is, as was clerlie verifeit befoir *the Counſall of Weiris*[1] eſtabliſched be the ſaidis *Eſtaitis*, for trying and cenſureing of matteris of this kynd, that the ſaid *Capitane Harie* was dyuerſe tymes challenget to the Combat be the ſaid vmq^le^ *Capitane Johnne Hammiltoun*, nochtwithſtanding of the mony offeris maid be the ſaid *Capitane Harie* to geve him all dew ſatisfactioun and reſſone, in the matter contravertit betuix thame, that, in reſpectiue termes of conſideratioun, could be craved; bot the moir the ſaid *Capitane Harie* eſchewit his Challange, he was ſo much the moir earneſt in following of the ſame, obiecting vnto the ſaid *Capitane Harie* the reproche of cowardice, and proteſting to abuſe him, in his private revenge, accoirdinglie: And ſo, the ſaid *Capitane Harie*, finding him ſelff intereſt and tuiched in ſo heigh a poynt of credeit and reputatioun, quhilk being anes loſt, was nevir to be recoverit, bot wald cary with him to the grave ane infamous imputatioun, and an ignominious ſpott of vnworthie cowardice; and haiſing reſpect, þairwithall, to his birth and parentage, quhilk he was lothe to blemiſche, in a matter of this kynd; and aboue all thingis, haveing euir befoir his eis the equitie of his caus, with ane full and conſtant aſſureance, that God, who is þe trew ſercheour of the heart, and vpone quhois devyne Prouidence the event of ſuch duellis dependis, wald iuſtifie his pairt, in that uniuſt Challange quhilk was revertit vpone him, he acceptit and vndertuik the Challange, quhairin it pleſit God to juſtifie and cleir the equitie of his caus, by making the ſaid vmq^le^ *Capitane Johnne* to vnderly the dew deſert of his errour and raſchenes: Quhairvpone, the ſaid *Capitane Harie*, being callit befoir the ſaid *Counſall of Weir*, and the forme and circumſtances of þe ſamyn being narowlie examined and ryped vp be thame, the qualitie of the ſaid *Capitane Harie* and þe ſaid umq^le^ *Capitane Johnne*, thair perſones being ſworne and actuall Officeris in the airmie, making thame ſubiect vnto the ſaid *Couaſall of Wear*, and puniſcheable be the lawis of that *Eſtait*; thay ffand, that þe ſaid *Capitane Harie* had done nothing vnbeſeameing the deutie of a ſouldiour, ſuppoirtit with the teſtimonie of a good conſcience: And þairfoir, reſtoirit him to his place and charge, quhairin he ſerued with good credeit dyuerſe ȝeiris þaireftir. And quhair as, he looked that this forme of tryell, vſet aganis him be the ſaid *Counſall of Wear*, who wer only Judges to him in this caice, ſould haif ſecuret and warranted him frome ony new perſute, ȝit the ſiſter and ffreindis[2] of the ſaid vmq^le^ *Capitane Johnne* callit him, for þe ſame Slauchter, befoir his Maieſteis Juſtice, in the ſax hundreth and fyve ȝeir of God;[3] quhairof informatioun being ſend vnto him frome hence, he maid his addreſs to his Maiestie, acquentit his bienes with the perticuleris of this matter, and all that proceidit þairin; quho, eftir conſideratioun þairof, nocht only vtterit his diſcontentment that ony ſuch matteris ſould haif bene walknit heir, bot his Maiestie was gracioufflie pleſit to grant vnto the ſaid *Capitane Harie* his Remiſſione for that deid, and wrait a Letter vnto *the Lordis* of his Maieſteis *Previe Counſall* ffor diſchargeing the Juſtice to meddle in that matter: Quhilk Remiſſioun and Letter being delyuerit to the lait *Erle of Dumbar*, and preſentit vnto the ſaidis Lordis, as ſome of thame rememberis; the ſleuth and negligence of thoſe who war truſted with the ſaid *Capitane Harie* his effairis, ſufferit his Letteris to perriſche; and the matter has euir reſtit and ſleipit ſenſyne till now. And quhairas this matter is alreddie tryed and cenſured by thoſe whome it properlie concerned, humblie thairfoir deſyreing the ſaidis Lordis that thay wald geve command to the Juſtice, Juſtice clerk, and thair deputtis to deſert the ſaid dyet, and to deſiſt and ceis fra all proceiding thairintill; lykas, at mair lenth is contenit in the ſaid Supplication. Quhilk being red, hard, and conſidderit be the ſaidis Lordis, and thay being þairwith weill advyſet, the Lordis of Secreit Counsall fiindis it verrie neceſſar and expedient, that þai vnderſtand his Maiesteis Will and pleſour in this matter, aſoir thay gif ony finall ſentence or

[1] Council of war; court-martial. [2] Blood-relations. [3] Anno 1605; a mode of expression by no means infrequent in pleadings, &c., for the sake of brevity.

directioun thairanent: And thairfoir the ſaidis Lordis Ordanis and commandis his Maieſteis Juſtice, Juſtice clerk, and thair deputis, to continew the ſaid dyet to the tuentie nynt day of Marche nixtocum, and to deſiſt and ceis fra all forder proceiding þairin, quhill the ſaid day; takand new cautioun of this ſupplicant, for his compeirance to his tryell the ſaid day, conforme to the ordour obſeruet in ſuche caices; to the effect that in this meane tyme the ſaidis Lordis may haif convenient tyme and laſure to informe HIS MAIESTIE anent the eſtait of this matter; and to attend HIS MAIESTEIS gracious Will and pleaſour þairanent. For quhilk purpois the ſaidis Lordis Ordanis ane Miſſiue Letter to be writtin to his Maieſtie.

EXTRACTUM *de Libris Actorum ſecreti Conſilij, ſ. d. n. Regis, per me Jacobum Prymrois, clericum ejuſdem, ſub meis ſigno et ſubſcriptione manualibus.* JACOBUS PRYMROIS.

Accoirding to the quhilk ACT, and for obedience of the ordinance mentionet thairintill, the Juſtice continewis this dyet, with all tryell to be tane for the ſaid cryme, to the ſaid tuentie nynt day of Marche nixtocum.—Mr James Bruce, indueller in Edinburghe, becomes cautiouner for his entry, &c.

(Mar. 29, 1622.)—COMPEIRIT Mr James Bruce, indueller in Edinburghe, as he that was cautioun for the ſaid *Capitane Harie* his entrie, and producet

ACT OF SECREIT COUNSALL.

APUD HALYRUIDHOUS, *xxvj die menſis Martij, anno dom. Im. Vjc.xxij°.* THE Lordis of Secreit Counſall, accoirding to ane Warrand and directioun in writ, ſigned be THE KINGIS MATIE, and this day preſented vnto thame, Ordanis and Commandis the Juſtice, Juſtice clerk, and þair deputis to Deſert þe dyet appointit to *Capitane Harie Bruce* for his compeirance befoir thame, to vnderly the law for þe Slauchter of vmqle *Johnne Hammiltoun*, and to deſiſt and ceiſe frome all proceiding aganis him at this dyet. Quhairanent the Extract of þir preſentis ſall be vnto thame a Warrand. EXTRACTUM, &c.

JACOBUS PRYMROIS.

Followis alſo the tennour of HIS MAIESTEIS Letter and directioun to the Lordis of Secreit Counſell, anent the premiſſes.

JAMES R.

RICHT truſtie and weilbelouit couſingis and counſalouris, and richt truſtie and belouit counſalouris, We greit 3ow weill. WE war pleaſed to wryte to 3ow about tuelf 3eiris ago, concerning *Capitane Harie Bruce*, willing that no legall proceiding ſould be permitted to be vſed aganis him for þe Slauchter of vmqle *Jon Hamiltoun*, in reſpect that þe ſamyn was committed out of oure dominiones; AND now, being crediblie informed, that of late ſome haif gone about to reveive þat perſute, nochtwithſtanding of our former commandement, We haif thoght guid, by theis preſentis, to will and requyre 3ow to diſcharge or Juſtice generall, Juſtice clerk, and þair deputis, and all vþeris or Judges and officeris quhatſumeuir, to grant ony Summondis or proces againſt þe ſaid *Capitane Harie* for þe foirſaid Slauchter, or in ony wayis preſume to medle or call him in queſtioun for þe ſamyn. And thus, moſt earneſtlie recommending to 3or ſpeciall cair, We bid 3ow fairweill. GEVIN at or manno of Theobaldis, the xiiij of Marche, 1622.

Accoirding to the quhilk Act of Counſall and ordinance thairin contenit, the Juſtice DESERTIT THE DYET aboue writtin.

APPENDIX TO THE TRIAL OF CAPTAIN HARIE BRUCE.

[SEVERAL Cases have already occurred in the course of this Collection, illustrative of the state of the LAW and practice, in Scotland, as to DUELLING, interchanging of CARTELS, and Slaughters committed in SINGLE COMBAT. The preceding Trial is one of much interest; and the subject led the Editor to make some enquiries into various affairs of

honour, which had happened about the same period of this King's reign. Among others which have hitherto been noticed in this work, none appear to have excited greater interest than the quarrel between the sons of Lord Cranstoun and of Sir Gedeon Murray, which had nearly terminated in the most fatal manner. Although unconnected with the Case of *Captain Harie Bruce*, the following documents throw much light upon the opinions and practices of the Nobility and gentry in feuds and affairs of honour. It has been thought proper to preserve them in this place, as a memorial of transactions which tend to give a complexion and character to the spirit and genius of those times.]

I. Letter *from the Privy Council of Scotland to King James VI., relative to the* Challenge, *&c. between the sons of* Lord Cranstoun *and of* Sir Gedeon Murray.[1]

Pleas your most excellent and sacred Matie,

As We hope that your highnes hathe long since vnderstood of sum Challenge of Combat betwix the secound sone of the Lord Cranstoun and Sir Gedeon Murray his sone, begun betwix the yowthes, vpon licht cawsis of verie small moment; and of the ordour taken be ws for preventing thame meiting, and calling of thame to there ansuer; and of the cowrse taken for there reconciliatioun, whiche wes done in presens of the hole Counsall, wheirby all probabilitie of forder Challenging betwix the pairteis then, in appeirans, wes removed; so when, vpon privie informatioun maid to ws, sum fear was apprehendit of a new breache betwix the pairteis, by interchangeing of Cartellis privilye betwix thame selfis, whowever we wald have bene sorye that the folyeis of the childrene, or the hard event which follow suche accidentis, suld have empaired or diminisched the love and affectioun which heirtofoir haith bene and doeth still continew betwix there parentis, (bothe of quhome haithe worthelie deserved, and have behaived thame selfis most dewtifullye and faythfullye as thay have bene imployed in your Maties servis,) yit heirin we war so muche more justlie moved to adverte to suche a noveltye, that efter a reconciliationn once maid befoir your Maties Counsell, ather the keiping of your highnes peace suld be so lytle regairdit, or the ordour takin by ws for the observeing therof so far contemned, as that any durst presume or attempt any new querrelling. Wheirvpon both the fatheris wer chairged to compeir, and bring with thame and exhibite there sones; whiche being accoirdinglie and dewtifullye obeyit by bothe of thame, efter a verye hard and exact tryall[2] takin, in regaird of the vnwillingnes of aither[3] of the yowthes, vpon thair first questioneing, to confess what new maiter haid passed betwix thame; at last, it being found that the Lord Cranstounis sone wes the Challenger, by a Cartell, wrettin efter the reconciliationn maid; we therwpon committed him cloise prisoner in *the Castle of Blaknes*. The other, whowevir, being provoked, yit, in regaird he did obscuire and conceale it, (being some presumptioun that he intendit to keip the meiting, and so to mak a breache of your Ma^teis peace,) wes adiudget to be committed *in Ed^r Castell*, in frie wairde, haveing haid fredome granted vnto him furth thairof within xlviij houris, and confyned within this Burghe and a myle abowt the same; where as, the said *Lord Cranstounis sone*, thir fourtene dayes past, haveing lyin cloise prisoner in *Blaknes*, and in the mean whyle making suite often by Bill[4] to be releived, confessing, in most humble maner, his offence, and offering all satisfactioun that suld be injoyned be ws, wes, by directioun, brocht from the place of his imprisonment by *the Lieutennent of your* Maties Gaird, and presented befoir ws; where, in the presence of *Sir Gedeon Murray* and his sone, he did humblye, vpon his knies, craive pardoun of your Matie for the offence done, and did intreat ws to be suitters for the same to your sacred highnes, on his behalf; haveing heirwithe confessed, also, the great wrong he haid done vnto your Maties Counsell, in preswming to renew ony Challenge efter reconciliationnes maid; and theirwith vttering most apparent signes of inward sorrow for offending of his so loveing father, vnto whome he knew this his bypast behaviour wes so distaistefull, as without ony interceffioun he culd expect at his handes no favour. He then to the pairtie challanged, in pre-

[1] *Denmylne MSS.*, Advocates' Library, A. 2, 40. [2] Enquiry; examination. [3] Both. [4] A Bill, or 'Supplication' to the Lords of Privy Council.

ſence of bothe fathers, did there confes the wrong he haid done him, offering him what ſatisfactioun he wald demand; and did there proteſt, that howevir, in his yowthfull folye, he haid aſcryved the laſt reconciliatioun as a maiter extorted by conſtraint or command of THE COUNSELL, that yit nottheles this his preſent aggriement wes of meire affectioun, whiche he intendit all bypaſt eylift[1] aboliſhed to continew heirefter.

There wes ſum jealowſye in this mater takin by SIR GEDEON, as that the LORD CRANSTOUN, whowevir not a direct vrger of his ſone to this *Challenge*, haid nottheles intendit to tak ſome advantage, to the preiudice of the credite and honour of him and his ſone; and by the ſpeiches delyvered by SIR GEDEON in our preiudice, we did conceave no leſs: Bot yit, that this impreſſioun, not being cleirit, might tak no deiper roote, we then did queſtioun THE LORD CRANSTOUN theirof; who, in preſence of SIR GEDEON, by his great oathe, vnrequyred, did proteſt that he wes ſo far from countenaunceing or allowing of his ſones actioun and cariage in this buſynes, as on the contrarye, theſe ſevin yeiris paſt, no incident whatſoever that haid interveyned haid ſo muche greivit him; and that he did affuire him ſelf that SIR GEDEON wes no les in conſcience perſwadit, ſince he haid foirwairned him, immediatlie vpon his knowledge of the firſt Challenge; and vpone his ſones depairtour the laſt tyme frome him, ſuſpecting the humour of the yowthe, and yit, vpon his conſcience, nocht knowing of any thing intendit, did of new certifie SIR GEDEONE of his fearis. Whiche declaratioun, being delivered with ſo great atteſtationes by one not muche accuſtomed to ſweiriog, did not onlye remove all ſcruipule and jealouſye frome SIR GEDEON, as he then affirmed, but left none of the beholderis vnſatisfyed, and fullie perſwadit of that Noble-mannis innocencye. THE COUNSELL, haveing taken ane verye ſtrict and exact tryall of all circumſtanceis whiche might inferre any the leaſt ſuſpitione of THE LORD CRANSTOUNIS allowance, airte, pairte, or connivence at his ſonis actioun, in the examining wherof, the farder that we did drywe we ſtill fand the father the more cleare of all imputatioun; and, in our judgement, SIR GEDEON is fullye perſwadit theirof; lykas, in our preſence he did profeſs no leſs. And howevir, that heirvpon all pairteis, bothe eldar and younger, wer reconceiled, yit, becaws of the offence done to your MA^TIE by JAMES CRANSTOUN, in preſſing to renew any querrell, efter aggriement ones maid in preſence of COUNSELL, we have theirvpoun adiudget the ſaid *James Cranſtoun*, that betuix and the firſt of October nixt, he ſall depairt your Maties dominiones, and remaine furthe of the ſame, and naway returne bak, vntill that your MA^TIES ſpeciall Licence and Warrant be purcheſt; and have takin ſovertye and cawtioun, bound vnder a great ſowme, for that effect. AND becaws there wilbe a neceſſitye of proviſioun to be maid by the father for the ſones furneiſing, in his going beyond See, theirfore we have committed him priſoner in his father's owin keiping, vntill the tyme of his depairture; who is to reſtraine, endureing that ſpace, his ſone of all ſuche libertye, wheirbye any furder harme might be feared.

AND albeit the reconciliatioun and aggriement wes fullye maid, ſo as in our judgementis there did not remayne the leaſt ſcruple of any furder grudge amonges the pairteis, yit the noveltye of the caice, and the hairme whiche the impunitye thairof might produce, if vpon this example, others who haif bene formerlye reconceilit, wald now preiſe to renew and reviue there olde querrellis, we culd nocht, in our dewtye to your MA^TIE, ſuffer this to go vnpuniſched; whiche moved ws, (however earneaſtlie and humblye entreated by SIR GEDEON MURRAY to recall our Sentence and determinatioun aganis the ſaid *James Craunſtoun*,) nottheles, for ane exemplarye puniſchment, and efferying[2] of others to commit[3] the lyk inſolence, to continew our reſolutioun takin in the maiter for his BANISCHEING, as ſaid is. As lykwayis, ather of the two fathers bund and obleiſt, not onlye for theſe there ſones, betuix whome this CHALLENGE hes paſt, bot for all others of there ſones come to mannis aige, everie ane of thame vnder the payne of Ten Thowſand merkis, that thay ſall keip your Maties peace, that no CARTELLIS ſalbe ſent by the one to the other; and that the pairtye vnto whome any ſalbe ſent, ſall

[1] Offence; from *oculus* and *ledere*. Danish, *overlast*, molestia, incommodum. [2] Affraying; terrifying. Fr. *effrayant*. [3] A strange form of speech, then in use, to express 'from committing.'

immediatlie, with all poſſible diligence, acquent the Counſell with the Challenge ſent to him; otherwayes the payne foirſaid to be incurrit. And hoipeing that nothing heirin is left vndone, whiche in ſic a caice wes requiſite, and fullye expecting your Maties good allowance and favorable conſtructioun of our proceidingis, wiſcheing thay may prove good mettall when thay come to the tryall of the trew tuitcheſtone, vnto whome we do moſt humblye pray for the continuance of all happines, We doe reſt Your ſacred Maieſteis moſt humble and obedyant ſubiectis and feruitouris,

Al. Cancell^s. Dumbar. Wigtoun. Kilsayth. J. Prestoun. Alex^r Hay. S. T. Hamilton.

Edinburgh, the tent of Auguſt, 1610.

To the King, his moſt ſacred and axcellent Maiestie, &c.

II. Letter, *the Privy Council to the King.*[1]

Most gratious and sacred souerane,

We reſſauit your Maiesteis Letter, twitcheing your Ma^teis cenſure[2] of that lait committit ryott be the Erll of Lotheane, and anent the fyne whilk your Maiestie wold haif to be impoſed vpon him for that caus; whairin, as your Maiesteis moſt excellent and rair wiſdome in the cenſureing of that mater ſo iuditiouſlie, by the circomeſtanceis ſett doun in your Maiesteis Lettre, and the directioun gevin be your Maiestie anent the pvniſching thairof, is verye weele warrandit with infallible groundis of iuſtice and reaſoun; yitt, becaus ſuche heich fynes in ryottis of this qualitye hathe not bene vſuall to be impoiſed vpoun ony perſonis heir, we wilbe bauld to intreate your Maiesteis fauour, for a mitigatioun of the fyne to Thrie Thouſand merkis, whiche in all oure opinionis is anſuerable[3] to the qualitye of the offence committed. He is full priſonner, and ſall ſo continew whill the pairtye in ſome meaſour reſſaue ſatisfactioun. And howeuir this ouerſight, by[4] all oure expectationis, hes fallen oute in his perſone, we hoip that this your Maiesteis cenſure of him, will mak him moir conſideratlie and reſpectiuelie to looke to his future cariage and behaviour.

And whereas your Maiestie doeth mervell that no tryale hes bene tane be ws of the inſolencie committit be the Lord of Cranstonis ſones aganis the Erle of Lotheane, it will pleis your Maiestie we did nevir heir of ony complaint in that mater, the pairtye being ſileut, and no informatioun gevin be him thairin: Alwayes,[5] we haif cauſit demand of him, yf he will perſew? He hes promeiſt to gif informatioun to your Maiesteis Aduocat, and to furneis probatioun; whairin we ſhall tak ſuche exact tryall, and accordinglie inflict ſuch pvniſhment as the courſe of iuſtice, in ſuche a caiſe, requireth. And ſo, praying God to bliſſe your Maieſtie with all contentment and happynes, we reſt for ever, Your Maieſteis moſt humble and obedyent ſubiectis and ſeruitouris,

Al. Cancell^s. Argyle. Montrose. Glencairne. Balfour. Glasgow.

Edinburgh, xv May, 1611.

To the King, his moſt ſacred and excellent Maiestie.

'Forceing'—'Defloiring'—Rape.

Dec. 5.—Andro Wischert of Mwretoun.

Dilaitit of the ſchamefull fforceing and defloiring of Beſſie Leſlie, dochter naturall to George Leſlie of Auldcraig, aganis hir will, ſcho being ane young virgane nocht paſt ellevin yeiris of age; committit in maner and at the tyme ſpecifeit in the Letteris.

Persewaris, Beſſie Leſlie, George Leſlie of Auldcraig.

Prelocutouris in defence, Mr Laurence McGill, Mr Roger Mowat.

[1] *Denmylne MSS.* Adv. Library. [2] Judgment. [3] Commensurate; corresponding to. [4] Contrary to; against. [5] Nevertheless; at all events.

The pannell offeris him ſelff to the tryell of the Law for the cryme contenit in the Letteris; quhairof, as he allegit, he is innocent; and diſaſſentis fra all maner of continuatioun: And proteſtis, in reſpect of his compeirance this day and place, to vnderly the law, and that thair is nocht ane ſufficient number of Aſſyſe preſent, that na Letteris be direct aganis him in tyme cuming; ſpeciallie, in reſpect this perſute is maliciouſlie intendit aganis him, being ane man of thre ſcoir ten yeiris of age, at the inſtance of the ſaid George Leſlie of Auldcraig, quha compeiris nocht this day to aſſiſt this perſute.

THE Juſtice ordanit the Aſſyſouris, lauchfullie ſummoned and nocht compeirand, to be vnlawit.— . . . . . Levingſtoun of Donypace become cautioun for the ſaid Andro his entrie, vpone xv dayis wairning, &c.

[CURIA JUSTICIARIE, *ſ. d. n. Regis, tenta in pretorio de Edinburgh, xx Marcij* 1622, *per Magiſtrum Alexandrum Coluile de Blair, Juſticiarium; necnon per Dominum Walterum Stewart de Mynto, ballivum Regalitatis de Gleſgow, virtute cujuſdam deliberationis Dominorum Secreti Conſilij.*]

ASSESSOURS TO THE JUSTICE, appointit be the Lordis of Secreit Counſall:
James Archebiſchope of Gleſgow,[1] Sir George Erſkyne of Innerteill,[2] Mr Jo^n Weymes of Craigtoun.[3]

Witchcraft—Sorcery—Charming—Incantation—Soothsaying—Abusing the People.

Mar. 20, 1622.—MARGARET WALLACE, ſpous of Johnne Dynning, mercheand burges of Gleſgow.

Dilaitit, accuſed, and perſewit of the ſeuerall articles and poyntis of Dittay following. DITTAY *againſt the pannel,*[4] *Margaret Wallace.*

FORSAMEKILL AS, albeit be the devyne law of Almychtie God, ſet doun in his ſacred woird, ſpeciallie in þe 20 chap. of *Leviticus*, and 18 chap. of *Deuteronomie*, aganis þe vſearis and practizaris of WITCHCRAFT, SORCERIE, CHARMEING, and SOTHESAYING, and againſt the SEIKERIS *of help and reſponſſis of thame*, thraitning and denunceing to þe committeris of ſic devilliſch practizes the pwneiſchment of daith. As alſo, be dyuerſe Actis of Parliament, and Municipall lawis of this Kingdome, alſweill publeiſt and ſet furth be his Maieſtie, in his awin tyme, as in the dayis of his maiſt noble progenitouris; namelie, be þe 73 Act of the Parliament, haldin be his hienes darreſt moþer, Quene Marie, of

[1] James Law, formerly Bishop of Orkney. In the year 1615, he succeeded Archbishop Spottiswood, the well-known author of the Church History published in his name; and died in November, 1632.
[2] Lord Innerteil, one of the Ordinary Lords of Session. [3] An Ordinary Lord of Session.
[4] This Dittay contains only the four Articles or points of which the Assise convicted this victim of superstition. The nature of the remaining points are clearly defined in the very interesting pleadings, which the Editor has carefully preserved at length, in consequence of their marking, in a striking manner, the prevailing opinions held by the most eminent Scotish lawyers, on the subject of Witchcraft, &c. The subject is so extraordinary, that it was thought advisable to print the pleas and arguments without curtailment.

worthie memorie, it is expreſlie provydit, ſtatute, and ordanit, that na maner of perſone or perſones, of quhatſumeuir eſtait, degrie, or conditioun thay be of, preſume, nor tak vpone hand to vſe ony maner of *Witchcraft*, *Sorcerie*, or *Negromancie*, nor gif thame ſelfis furth to haif ony ſic craft or knawlege, thairby abuiſeing his hienes people and ſubiectis; and that na perſone ſeik ony help, reſpons, or conſultatioun at ony ſic vſearis or abuſearis foirſaidis, vnder the pane of death, alſweill to be execute vpone the vſear and abuſear, as to the ſeiker of the reſpons or conſultatioun; as in the ſaidis Lawis and Actis of Parliament at mair lenth is contenit. NOCHTWITHSTANDING quhairof, it is of verritie, that the ſaid *Margaret Wallace*, ſchaiking of all feir of God, reuerence or regaird to our ſouerane lordis authoritie and lawis, haiſing conſauet ane deidlie haitrent and evill will aganis *Cuthbert Greg*, couper, burges of Gleſgow, becaus of certane ſpeiches vtterit be him aganis hir and vmq^le^ *Criſliane Grahame*, ane notorious Witche, and laitlie execute for Sorcerie and Witchcraft, at Witſonday a thre ȝeir ſyne, or þairby, the ſaid *Margaret Wallace*, furth of þe malice of hir heart, promeiſt and avowit that ſcho ſould mak the ſaid *Cuthbert*, within few dayis þaireftir, nocht of habilitie to work or wyn to him ſelf ane caik of breid; accoirding to the quhilk devilliſche promeiſe and damnable vow, the ſaid *Cuthbert* ſchortlie thaireftir, be the ſaid *Margaret* hir devilliſche Inchantment, Sorcerie, and Witchcraft practizet be hir vpone him, he was viſſeit and grevouſlie trubillit with ane ſtrange vnnaturall and vnknawin diſſeis, maiſt crewallie and lamentabillie tormentit with continuall ſueiting, be the ſpace of fyftene dayis togidder, and þairby wes brocht to ſic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to ſteir or move himſelf: And the ſaid *Margaret*, as ane Witche and Sorcerar, being ſuſpectit as the onlayer and cauſer of the ſaid grevous and heavie diſſeis, was ſent for by certane of þe ſaid *Cuthbertis* freindis, and requeiſtit to cum and vizeit him; and eftir mony malicious refuiſallis maid be hir, in end ſcho come to him; at quhais cuming, ſcho, to manifeſt hir ſkill for his help, tuik him be þe ſchaikill-bane[1] with the ane hand, and laid hir vther hand vpone his breiſt, and without ony word-ſpeiking, ſaif only be moveing of hir lipis, paſt fra him at that inſtant; and vpone þe morne þaireftir, returning bak agane to the ſaid *Cuthbert*, ſcho tuik him be þe airme and bad him aryſe, quha at that tyme, and fyftene dayis befoir, was nocht abill to lift his legis without help; ȝit ſcho, haiſing vrget him to ryſe, and taking him be the hand, as ſaid is, brocht him out of his bed, and þaireftir led him but[2] the hous; quha, immediatlie þaireftir, be hir Sorcerie and Charmeing practizet be hir, walkit vp and doun þe fluir, without help or ſuppoirt of ony; and fra that tyme quiklie recoverit and convaleſſit of þe former

[1] Wrist. [2] To another apartment. In small houses, consisting merely of a '*but*' and a '*ben*,' the '*but*' is the outermost room or kitchen; the 'ben' is a better sort of apartment, where, upon great occasions, company is received. The master and mistress usually sleep in the 'ben' or inner room.

grevous diſeais: Quhairin þe ſaid *Margaret* hes committit manifeſt Sorcerie and Witchcraft, in laying on and taking af ſeikneſſis, be hir devilliſche meanis, vſet and practizet be hir vpone the ſaid *Cuthbert*, in maner foirſaid. AND ſiclyk, about foure ȝeir ſyne, or þairby, the ſaid *Margaret Wallace*, being within þe duelling hous of *Alexander Vallange*, mercheand burges of Gleſgow, and haiſing fallin in ane grit and ſuddane ſeiknes within þe ſaid hous, ſcho incontinent þairefter, as ane conſulter and ſeiker of help and reſponſſis of Witches and Sorceraris, inſtrumentis of the Devill þair maiſter, ſend for vmq^le^ *Criſtiane Grahame*, ane notorious Witche, and quha is laitlie convict and brunt for hir devillerie and Witchcraft, practizet aganis dyuerſe his Maieſteis guid ſubiectis, in Gleſgow and þairboutis; quhilk vmq^le^ *Criſtiane Grahame*, haiſing cum to the ſaid *Margaret* to þe ſaid Hous, ſcho tuik þe ſaid *Margaret* furth þairof to hir awin buith,[1] quhair, be the ſaid *Criſtiane* hir devilliſche charmes practizet vpone the ſaid *Margaret*, the ſaid *Margaret* was curet of hir former ſuddane ſeiknes. And þe ſaid *Criſtiane Grahame*, with the ſaid *Margaret Wallace*, cuming togidder bak agane to the ſaid hous, and at þe turnepek-fute þairof, meitting with *Margaret Vallange*, dochter to the ſaid *Alexander*, thay, at þe leiſt ane or vther of thame, laid þe ſaid crewall ſeiknes, be þair Sorcerie and Witchcraft, vpone the ſaid *Margaret Vallange*, ane ȝoung infant bairne, quha immediatlie þaireftir, in grit ſuddantie, fell doun to þe grund, the haill power of hir body being tane away frome hir; and with pitiefull ſcreiches, ſchoutis, and cryis, lying in that horrible payne, nocht hable to arryſe, was tane vp be *Margaret Montgomerie* hir moþer, ſpous to þe ſaid *Alexander*, and brocht in be hir in hir airmes to þe hous, and þair remanit with continuall ſchouteing and crying, nocht being of habilitie to move or gang be þe ſpace of xxiiij houris þaireftir, quhill[2] þe ſaid *Margaret Wallace*, vnſent for, come in to vizeit hir; lyk as, þe ſaid *Margaret*, as ſone as ſcho luikit vpone þe ſaid bairne, declairit that it was the ſuddane tranſe or diſeis that ſcho had tane the day befoir, and þairfoir willit and deſyret the bairnes mother to ſend for *Criſtiane Grahame* to cure and releif hir þairof: And the ſaid *Margaret Montgomerie* haiſing abſolutelie refuiſit ſa to do, ſaying to hir, 'ſcho wad commit hir bairne to God, and nocht mell[3] with the Devill or ony of his inſtrumentis,' the ſaid *Margaret Wallace* maiſt blaſphemouſlie and devilliſchlie anſuerit agane, that þe ſaid '*Criſtiane Grahame* could do als mekill, in that eirand, in cureing of that diſeais, as gif God him ſelff wald cum out of Hevin and cure hir—and albeit þe deid-ſtraik[4] war laid on, ſcho could tak it af agane—and without hir help þair could be na remeid to the bairne!' Lyk as, ſchortlie þaireftir, without the motheris knawlege, the ſaid *Criſtiane Grahame* was brocht in be þe ſaid *Margaret Wallace* to þe ſaid bairne; at

[1] Her husband's booth, or shop. [2] Until. [3] Fr. *mêler*. [4] Literally, death-blow.

quhais cuming, the ſaid *Margaret* liftit vp þe bairnes heid, and the ſaid *Criſtiane* tuik hir be þe ſchaikill-bane,[1] and brocht þe bairne furth of hir bed, quhair ſcho was lying bedfaſt in grit payne of befoir; and þairefter, ſetting hir doun vpone ane ſtuile, with ſome croces and ſignes maid vpone hir, and be vttering of dyuerſe woirdis, (nocht knawin quhat thay war,) reſtoirit hir to hir helth. Quhairin, the ſaid *Margaret Wallace* hes planelie declairit hir ſelff to be ane oppin and manifeſt conſulter with the ſaid *Criſtiane Grahame*, ane notorious Witch, and ane ſeiker of help and reſponſſis of hir, in her devilliſch airt; alſweill for cureing of her ſelff, as in practizeing with her, be Sorcerie and Witchcraft, to þe cure and help of þe ſaid *Alexander Vallange* bairne, in maner and forme aboue writtin: And þe ſaid *Margaret Wallace* is airt and pairt of þe devilliſch practizes abouewrittin, practizet be the ſaid *Criſtiane Grahame*, at the time and in maner foirſaid. To the taikin,[2] the ſaid *Criſtiane Grahame*, the day of hir accuſatioun and perſute, being þe xxvj day of October laſt, 1621, willinglie, of hir awin accoird, in Judgement, befoir hir convictioun, the Aſſyſe being incloſet, affirmet, and with oppin ſpeache declairit, that þe ſaid *Margaret Wallace* was airt and pairt with hir in all hir wiket deidis; and reſſauit fra hir ſum cullourit ſilk and worſet, for practizeing of Witchcraft againſt ſic perſones to quhome þe ſaid *Margaret* buir invy; and quhan willinglie ſcho wald nocht geve þe ſaid *Margaret* ſic materiallis, the ſaid *Margaret*, as ſcho ſaw thame in þe ſaid *Criſtianes* handis, wald violentlie reif þame from hir: Lyk as, vpone the morne þaireftir, ſcho being at þe ſtaik befoir hir executioun, ratifeit and renewit the haill premiſſes to be of verritie.

Item, a tua ȝeir ſyne, or þairby, *Margaret Mure*, dochter to vmq^le^ *Archibald Mure*, burges of Gleſgow, being hevelie diſeaſit with ane ſtrange and vncouth ſeiknes, and nocht liklie to haif recoverit þairof, the ſaid *Margaret Wallace*, geving out hir ſelff to haif ſkill in þe cure of the ſaid ſeiknes, ſcho come to the duelling-hous of *Dauid Scheirar*, couper, burges of Gleſgow, and þair finding *Marioun Mure*, his ſpous, faþer-ſiſter to the ſaid *Margaret Mure*, lamenting and weiping for the ſaid *Margaretis* ſeiknes, the ſaid vmq^le^ *Criſtiane Grahame*, be þe ſaid *Margaret Wallace* hir devyſe and directioun, a littill þaireftir, come to þe ſaid hous; and þe ſaid *Margaret Wallace*, being acquentit with þe caus of þe ſaid *Mariones* greif, deſyret þe ſaid *Criſtiane Grahame* to help þe bairne; quhais anſuer was to the ſaid *Margaret Wallace*, that the ſaid *Margaret Wallace* and ſcho behovet to go firſt to the place aggreit vpone betuix thame, quhilk place was knawin to þe ſaid *Margaret* hir ſelff: Accoirding to the quhilk appointment, the ſaid *Margaret Wallace*, with the ſaid *Criſtiane Grahame*, paſt, that ſame nycht, betuix ellevin and tuelf houris, vnder ſilence and clud of nycht, to the ȝaird of *James Fynlay*, burges of Gleſgow, quhair thay remanet the ſpace

[1] Wrist. [2] In token, testimony, or proof whereof.

of ane hour togidder, practizeing Sorcerie and Witchcraft, for cuiring of þe ſaid bairne, and taking the ſaid ſeiknes af hir, be vnlauchfull meanis; lyk as, þat ſamyn nycht, the ſaid ſeiknes wes tane af þe ſaid bairne, and ſcho convaleſſit þairof. To the taikin, the ſaid *Margaret Wallace*, in hir going to þe ȝaird þat nycht, tynt hir pantoun;[1] lyk as, þe ſaid *Marioun Mure*, for þe foirſaid cuir, gaif to þe ſaid *Margaret Wallace* and *Criſtiane Grahame* ane guiſe,[2] with ane pynt of wyne, within aucht dayis þaireftir. ITEM, a tua ȝeir ſyne, or þairby, ane diſcoird haiſing fallin out betuix *Alexander Boig*, ſmyth in Gorballis, and þe ſaid *Margaret Wallace* and *Johnne Dynning*, hir huſband, about the bying of ane irne ſtudie[3] to *Williame Weymes*, mercheand burges of Gleſgow, ane complant was maid vpone him be þe ſaid *Margaret* to *Sir George Elphingſtoun of Blitheſwoid, knyt*, his maiſter; and becaus ſcho reſſauit na amendis at þe ſaid *Sir George* handis, becaus he tryit[4] hir complent to be vniuſt, and only maid vpone malice, the ſaid *Margaret*, maiſt impudentlie, in preſens of þe ſaid *Sir George* and *his Lady*, *James Pollok*, and *George Thomeſone*, his tennentis, oppinlie thraitnet and avowet to do to þe ſaid *Alexander Boig* ane evill turne: ffor effectuating quhairof, ſcho, be hir Devillerie, Sorcerie, and Witchcraft, prepairit and practizet be hir, laid ane crewall and feirfull ſeiknes vpone . . . . . *Boig*, the ſaid *Alexanderis* bairne, of foure ȝeir auld, within few dayis þaireftir; quhilk bairne, with continuall ſueiting and vomeiting, deceiſſit within tua dayis thaireftir. AND laſt, þe ſaid *Margaret Wallace* is, and hes bene thir aucht or nyne ȝeiris bygane, ane cowmoun conſulter with Witches, ſpeciallie with the ſaid *Criſtiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane ſeiker of help and reſponſſis of thame, alſweill for hir awin cure and releif of dyuerſe ſeikneſſes and diſeaſſis quhairwith ſcho hes bene viſſeit, as for þe cure and help of hir freindis and acquentance in þair ſeikneſſes and diſeaſſis; as alſo, for þe overthrow and diſtructioun of dyuerſe perſones, men, wemen, and bairnes, be Sorcerie, Witchcraft, Charmeing, and Incantatioun, and vþeris devilliſch and vnlauchfull meanis, expreſlie prohibeit and forbidden be the Lawis of Almychtie God, and Municipall Lawis of this kingdome; thairby abuſeing the people, and puting thame in grit dreddour[5] and feir of hir and of hir devilliſch practizes, vſet and practizet be hir aganis ſic of our ſouerane lordis peceable ſubiectes to quhome ſcho hes borne ony grudge, or vtterit ony malicious thraitningis. BE the committing of þe quhilkis perticular practizes aboue writtin, as alſo be the hanting, vſeing, and frequenting of þe vnhappie ſocieatie and companie of þe ſaid Witches and Sorceraris, inſtrumentis of the Devill, ſauld and gevin over to him for committing of all maner of miſcheif, and in aſſiſting and

[1] Slipper. Fr. *pantoufle*.
[2] Goose.
[3] Purchasing of a smith's stithy, or anvil.
[4] Ascertained upon examination.
[5] Dread; terror.

taking pairt with thame in þe practize of all ſoirt of Witchcraft and Sorcerie, and in the ſeiking of help and reſponſſis of thame, baith for cureing of vnnaturall and vnknawin ſeikneſſes, and for þe malicious inflicting and laying on of dyuerſe feirfull and horrible ſeikneſſes and diſeaſſis vpone dyuerſe perſones, for þair overthraw and diſtructioun, in maner foirſaid, the ſaid *Margaret Wallace* hes contravenit the tennour of þe ſaidis Lawis and Actis of Parliament, and incurrit the panes and pwneiſchment of daith ſet doun þairintill; quhilk aucht and ſould be execute vpone hir, with all rigour, to þe terrour and example of vtheris heireftir.

Persewaris, Sir Williame Oliphant of Newtoun, kny^t^; Alexander Boig, ſmyth in Gorbellis; Johnne Robertoun, querriour, burges of Gleſgow, for thame ſelffis, and as informeris to his Maieſteis Aduocat of the haill pointis of Dittay.

Prelocutouris in defence, Johnne Dynning, mercheand in (Gleſgow); Mr Alexander Peiblis, Mr Robert Lermonth, Mr Thomas Nicolſone, younger, (Advocates.)

Compeirit Sir Walter Stewart of Mynto, kny^t^, and producet ane delyuerance of the Lordis of Secreit Counſell; quhairof the tennour followis.

Supplicatioun *of Ludouik, Duik of Lennox.*

My Lordis of Secreit Counsall, vnto ȝour Ll. humlie meanis and ſchawis I ȝour ſeruitour, Lodouik Duik of Lennox, lord and heritabill Bailȝie of the Regalitie of Gleſgow, and Sir Walter Stewart of Mynto, kny^t^, my depute of þe ſaid Bailȝerie: That quhair, þe tuentie day of Marche inſtant is appointit to Margaret Wallace to compeir befoir the Juſtice, in the Tolbuith of Ed^r^, to vnderly the law for ſum poyntis of Witchcraft laid to hir charge: And quhair as, ſcho duellis within þe boundis of my Regalitie, and ſua is ſubiect to me, my office and Juriſdictioune, ȝit I will nocht conteſt in that poynt, nor ſtand out aganis þe courſe tane be ȝour Ll. for hir tryell; bot for the preſeruatioun of þe liberteis and privileges of my office and Juriſdictioun, my humble deſyre and Petitione vnto ȝour Lo. is, that my ſaid depute may be admittit to ſit with his Maieſteis Juſtice in the tryell of the ſaid Margaret, and to judge þairin with him accoirdinglie—and ȝour Lo. anſuer.

[*Followis the Lordis delyuerance, vpone the bak of the foirſaid Supplicatioun.*]

Apud Ed^r^, *xix Marcij, I^m^.Vj^c^.xxij.* Fiat *ut petitur.* Al. Cancell^s^. Mar. Melrois.

Vpone the productioun of the quhilk delyuerance, the ſaid Sir Walter aſkit inſtrumentis.

The Justice Ordanit the ſaid *Sir Walter* to ſitt doun with him, with the remanent Aſſeſſouris.

The Dittay being red, and *the ffirſt Article* thairof, concerning hir laying on of ane grevous ſeiknes vpone Cuthbert Greg, couper, burges of Gleſgow, be Sorcerie and Witchcraft, and aff-taking of the ſaid ſeiknes be the lyk devilliſche and vnlauchfull meanes; as the ffirſt Article beiris; quhilk the pannell haillilie denyit.—It is thaireftir allegit be Mr Alexander Peiblis, as prelocutour for the pannell, that the Dittay and ffirſt Article thairof can nawayis be put to the knawlege of ane Aſſyſe; becaus it is nocht lybellit, nor ſet doun in the Dittay, that the fact lybellit was done be the pannell, or the ſeiknes inflictit be hir. Nixt, it is nocht lybellit *quibus mediis, quibus modis, et quibus malis artibus,* the ſamyn was accompleiſchet; becaus Witchcraft can nocht be accompliſchet as

Witchcraft, bot[1] be characteris, ſignes, croces, poyſonet watteris, poyſonet aſches, poyſonet oyles, powderis, figures, pictouris, poyſonet herbis, ruittis, vennemous oyles, woirdis, ſpeiches, by incalling and invocatioun of the name of Sathan, quha, at the accompleiſchment quhairof, hes promeiſt to geve his preſens to thame; without the quhilkis, or ony of thame, Witchcraft can nocht be accompleiſchet: Nather is it lybellit, that this fact and deid allegit is committit be the pannell, be ony of thir meanis: And ſa, that Article can nocht pas to ane Aſſyſe.—To the quhilk it is anſuerit be my lord Aduocat, that the allegeance aucht to be repellit, in reſpect of the lybell and haill poyntis thairof, tane *conjunctim;* be the quhilk it is affirmet *poſitiué*, that this ſeiknes was laid on be the pannell vpone *Cuthbert Greg*, be hir Sorcerie and Witchcraft; and he purget, and relevit, and reſtoirit to his helth be hir Sorcerie and Witchcraft: And ſa, the Dittay, as relevant in that poynt, ſould pas to ane Aſſyſe.

It is forder allegit be the pannell and hir prelocutouris, that the woirdis 'laying on and taking af' ar altogidder generall, and can nocht pas to ane Aſſyſe, nevir condiſcending in ſpeciall quhat was done; as is ſet doun in the former definitioun of Witchcraft.—To the quhilk it is anſuerit be the perſewaris, that thair is no neceſſitie to condiſcend vpone the forme of the on-laying and aftaking of ſeikneſſes, quhidder be woirdis, ſignes, croces, and vtherwayis, the perſewaris nawayis being previe thairto, nather can thai be vrget to condiſcend thairupoun, ſeing the Witches, practizeris of that vnlauchfull and godles meane, ar beſt acquentit with the poyntis of thair awin craft: And thairfoir, it being lybellit, relevantlie, that, be hir Sorcerie and Witchcraft, the ſeiknes was baith laid on and tane af be hir, the ſamyn ſould pas to the knawlege of ane Aſſyſe, as relevant.

It is forder allegit be Mr Thomas Nicolſone, as prelocutour for the pannell, that of the Law *multa indicia debilia nunquam faciunt indicium indubitatum, quia nunquam ea que natura ſunt dubia poſſunt facere rem indubitatum; ut multa integra vnum ſanum, multa non alba vnum album.* This is the opinioun of *Pharinacius*, and of *Delrio* in his 5 ſect. pag. 728; at the leiſt, except that thair war ane coherence and neceſſar ſubordinatioun of *illa multa indicia.* Bot ſa it is, in this poynt of dittay, thair is confuſet ſeuerall articles, quhilkis, *per ſe*, ar *indicia debilia;* and thair is na coherence amangis thame ſelffis, in ſa far as the promeiſſing to do him ane evill turne, and the ſubſequent ſeiknes, ar nawayis coherent, nather can the ane follow vpone the vther. *Secundo, circumſtantie indictionum ſine quibus ad inquiſitionem non proceditur ſunt quis, quando, vbi, cum quibus, quomodo circumſtantia, quomodo eſt huic vſui, vt quibus inſtrumentis factum eſſe dicatur, vt ſint pulveres, vnguina determina mortuorum.* And quhair it appeiris to be allegit in the reply, that *de medijs non poteſt conſtare,* becaus

[1] Excepting; unless.

thay are knawin only to the Witches and thair Maifter, thair is heirin ane manifeft equivocatioun, in fa far as be the determinatioun of the haill traiteris *de Veneficijs, hec duo funt difperata figna media;* it is grantit *fine mediis,* condifcending vpone *medijs,* a lybell may ftand relevant; becaus *hec* Satana *ftratagemata quibus ille naturaliter vtatur medijs funt plerumque incognita;* bot of all neceffitie, to the lybelling of ane deid of Witchcraft, *accedere oportet fuperftitionem vt dicatur vfurpaffe res aliquas facta vel verba que fapiant incantationem vel dicatur nominatim exercuiffe actum aliquem qui ex communi maleficiorum praxi ad malificium dirigitur.* This is Delrio's opinioun, ceitting the haill treiteis *de Veneficiis,* in his thrid fect. pag. 711; et libro 5, fect. 16, pag. 774. And the premiffes, fa authorizet be the haill learnet wryteris, ar of infallible verritie; for this reafone, becaus thair can be na deid of Witchcraft lybellit relevantlie, bot man[1] be fa lybellit, as it is poffible, *per rerum naturam,* to the Affyfe to cognofce thairupovn; bot it is fubfumet, that except fum fenfible actioun or figne, or vther thing be lybellit, it is impoffible to the Affyfe to cognofce thairupoun, *quia nihil eft in anima quod non fit prius in fenfu.*

The perfewaris repeittis thair former anfuer, foundit vpone the haill memberis of the Dittay, tane *coniunctim;* quhilkis memberis coheris verrie pertinentlie—a promeis to inflict the feiknes, and laid on—the on-laying of the feiknes, be Inchantment, as the Dittay beiris—and the taking be the hand of the perfone vizeit with the feiknes, and releifing him thairof be moveing of hir lipis, &c.: And as for the tryell of the Affyfe, the deidis ar verrie publict and knawin; and referris the verritie thairof to the Depofitiones of the Witneffes alreddie tane, and to be tane in that matter, and to the Affyfe awin knawlege.—The pannell adheris to thair former exceptioun, vncondifcending in fpeciall, *quibus modis, quibus mediis, et quibus malis artibus* to infer Witchcraft.

The pannell quarrellis that pairt of the lybell be the quhilk it is faid, that fcho inflicted the feiknes be Witchcraft, nocht condifcending quhat maner of Witchcraft was vfet for inflicting thairof. And quhair it is faid, that the memberis coheris, becaus of a promeife and the effect following, the pannell oppones the authority of *Pharinatius,* confirmet be *Delrio,* in the 718 page of his 3 fect.; quhair it is faid, *immo mine*[2] *delictum fubfecutum inimicia non fufficiunt ad penam fortilegij; quia hujufmodi indicia funt tantum remota.* As lykwayis, a ftronger authoritie, pag. 717; quhair it is affirmet, and bakit with reffone,[3] in thir termes, *mine fubfecute damno—et fi male fame fit minaus indicium, funt infertum ratio poteft enim pars offenfa alios habere inimicos qui hoc tegmine preter fchelus perpetrarunt:* Nather is thair neceffitie to affirme *alium feciffe;* becaus the poffibilitie of ane inftance aganis ane generall reule evinces the incertantie

[1] Must. [2] Threatening expressions. [3] Backed, seconded by argument.

thairof: *Additur, quod in criminalibus nunquam ex presumptionibus proceditur ad condemnationem, sed probationes debent esse luce meridiana clariores.* And as to the vther pairt, concerning the af-taking of the seiknes, thair is na deid lybellit bot ordinarie deidis of vizeiting a patient, be a freind or a phisitioun, to wit, graipping of the pulses or chaikill-bane and breist, quhilk is the steiring of the spreittis-vitall, and is the ordiner behauiour vset and practizet be the visitouris of ony patient; and becaus that eftir thais ordiner remedeis the patient arraise, and that scho maid him to ryse, *est elenchus dilirij.* And forder, the pannellis former authorities man[1] be respectit, becaus thair is na contrair practeis producet.—My lord Aduocat repeitis his former ansuer.

THE *Secund Article of Dittay* being red, and the said Margaret being accuset thairby, viz. that vpone a discord fallin out betuix hir and *Johnne Robertoun*, querriour, a thre yeir syne, scho thraitnet and avowit to be avengit vpone his flesche; quhairvpone a diseis was inflictit be hir vpone him, quhairin he yit continewis, and that be hir Sorcerie and Witchcraft practizet be hir vpone him. —It is allegit be the pannell, aganis the said secund Article of Dittay, that the samyn is nawayis relevant anent *Johnne Robertoun;* being altogidder coincident with the former Article, and cayreing thairwith far les probabilitie nor[2] the former; ffor thair is na member thairof relevant to infer Witchcraft, for sa mekill thairof as consistis in fact, tuiching *Robertoun* his inhabilitie to work this thre yeir bygane, throw the inhabilitie of his seiknes, quhilk is manifest fals in the selff: ffor it is evident, be oculer inspectioune, to luik to him presentlie at the bar, that he hes sufficient strenth of body to work: As also, it sall be verifeit, gif neid beis, that he, being an querriour of his craft,[3] hes wrocht, thir dyuerse yeiris bygane, to dyuerse persones, namelie, to *Sir George Elphingstoun of Blithesswoid, George Anderſone in Woidsyde,* and to the pannell, be wynning of stanes furth of the querrell;[4] and repeitis the former allegeance maid against the ffirst Article. *Igitur,* &c.—To the quhilk it is ansuerit be the persewaris, that the allegeance aucht to be repellit, in respect of the Dittay, quhilk is relevant in it self. And as to that point consisting *in facto,* the persewar referris the tryell thairof to the Witnesses producet and to be producet, and to the persones of Assyse, quha aucht to cognosce vpone the haill poyntis of Dittay, consisting *in facto.*

It is forder allegit be Mr Thomas Nicolsone, that the said secund poynt of Dittay is altogidder irrelevant; becaus of the Law, *indicium minarum et damni subsecuti,* quhilk is the only substance of this point, and is nawayis relevant of the Law, *quoties delictum ex intervallo dicitur subsequutum;* bot sa it is, in this Dittay, it is lybellit, that the thraitning of *Johnne Robertoun,* and the inflicting of the diseis, was within this yeir and this half, quhilk is *ex intervallo;* And

[1] Must. [2] Than. [3] To his trade. [4] Stone quarry.

quhair as, it appearis that this ſeiknes is inflicted immediatlie eftir ane vther thraitning maid to the wyfe of *Johnne Robertoun, nullo modo relevat;* beceus *vt mine et damnum ſubſecutum faciunt indicium, oportet vt ſit eadem perſona cui mine et damnum dicuntur inferri;* ſa that the thraitning to the wyfe, and inflicting ſeiknes vpone hir huſband, is na relevant poynt. *Item, mine et damnum ſubſecutum nullum omnino faciunt indicium, niſi mine fuerint ſpecificate, ſeu de eodem quod ſubſecutum eſt in ſpecie;* ffor ane general thraitning to do ane evill turne, nocht condiſcending vpone the ſpeciall evill turne, can haif na coherence with ane ſpeciall ſkaith following thairaftir, to mak it *venefice;* becaus *mine et damnum ſubſecutum* ar comptit *aliquale indicium maxime reſpectu predictionis,* as ane maner of ſuthe-ſaying; and that can be comptit na ſuthe-ſaying quhilk ony man could lykwayis foirtell by[1] ane Witche, viz. *predicere de genere et ſubſecutum eſſe ſpeciem.*—My lord Aduocat adheris to his former anſuer.

The *Thrid Article of Dittay,* anent ane diſcord that fell out betuix the pannell and *Jonet Harper,* and of ane thraitning and vow maid to mak the ſaid *Jonet Harper* in a worſe cais nor[2] hir poyſonet ſwyne; and anent ane feirfull ſeiknes quhairin ſcho ſchortlie thaireftir fell be the pannellis Sorcerie, Incantatioun, and Witchcraft—It is allegit be the pannell and his prelocutouris, that the thrid Article is nawayis relevant, nevir condiſcending quhat maner of Inchantment ſcho was bewitchet with, and be quhat factis and deidis this was done, and quhat was vſet be the pannell for that effect.—It is anſuerit be my lord Aduocut, that the allegeance aucht to be repellit, in reſpect of the Dittay.

The *ffourth Article of Dittay,* anent the pannell hir being within *Alexander Vallange* hous, quhair ſcho fell in ane grit and ſuddane ſeiknes; and hir ſending for vmq[le] *Criſtiane Grahame,* ane notorious Witche, and conſulting with hir for hir relief of that ſeiknes; and eftir the ſaid *Criſtiane* hir cuming, of the pannellis paſſing out of the ſaid *Alexander Vallange* hous to hir awin buith, with the ſaid *Criſtiane,* quhair ſcho was charmet and curet; and thaireftir the ſame ſeiknes, be devillerie and Witchcraft, caſſin vpone *Alexander Vallange* bairne; and anent the ſaid *Criſtiane Grahame* hir cuming with the pannell to the bairne, and cureing hir, be taking af agane of the ſaid ſeiknes; and for airt and pairt of the af-taking and on-laying of ſeiknes, and of af-taking the ſamyn agane af the ſaid bairne with the ſaid *Criſtiane;* and conſulting and practizeing of Witchcraft with hir for that effect, &c. The ſamyn being red, and the pannell indytit thairof—It is allegit be the pannell and hir prelocutouris, aganis the ſaid fourt Article, that the firſt pairt thairof is nawayis relevant, beiring that ſcho contractit ane ſuddane diſeiſe, and for cureing thairof, ſend for *Criſtiane Grahame,* ane notorious Witche, except it had bene expreſlie lybellit, that the tyme the

[1] Besides; *forbye;* independent of. [2] Than.

pannell ſend for hir, ſcho was ane notorious Witche, of the pannellis knawlege, and that ſcho ſend for hir as ane notorious Witche, *ad hunc effectum*, to cure hir of that diſeis: And it is nocht lybellit nather, that quhan *Criſtiane* come, the pannell conſultit with hir as with ane Witche; ffor, it is ſupponit[1] that ane Notter[2] war hangit for ane ffals Inſtrument, and he had gevin the excipient ane Seiſing tuentie yeiris afoir, is that Seaſing, gevin ſa lang befoir, ffalſe? Na mair can that be ane poynt of Dittay, the pannellis ſending for *Criſtiane Grahame*, except ſcho was knawin to hir at that tyme to be ane Witche. The ſecund member is nawayis relevant, beiring that ſcho curet the pannell in the buithe, for that makis ane contradictioune, that ſcho was deidlie diſeaſet quhan ſcho come, and thaireftir raiſe and paſt to the buithe, and thair was curet. The thrid member is nawayis relevant, beiring that the pannellis ſeiknes was caſſin on the bairne, being lybellit that the ſamyn was done be the pannell, or be *Criſtiane Grahame*, or be ane or vther of ws (thame). The fourt member is nawayis relevant, becaus it is confeſſit in the Dittay, that the pannell was curet in the buithe; and thaireftir come out of the buithe to the hous, and cuiſt it on the bairne: Gif the pannell was curet in the buith, quhair was the ſeiknes? *Hoc eſt impoſſibile.* As to the reſt of the poyntis of that Article, that ſcho come doun to the hous, vnſent for, quhair the bairne was; that can be na poynt of Witchcraft. That the pannell declairit it was the ſeiknes ſcho had, *non relevat*, except it had bene verifeit and tryit[3] that hir ſelf had bene bewitchet. And as for that member thairof, deſyreing to ſend for *Criſtiane Grahame* to help her, *non relevat* to infer Witchcraft, except ſcho had knawin the ſaid *Criſtiane* to be ane notorious Witche. As to the reſt of that Article, quhilk the pannell altogidder denyis, vpone hir aith and conſcience, quhan the judge demandis hir; and albeit it war grantit, yit it is na poynt of Witchcraft, bot rather Blaſphemie, and blaſphemous ſpeiches, quhilk can nocht coheir with this lybell of Witchecraft; bot is content, quhan evir ſcho ſall be tryit and fund giltie, to vnderly the pwneiſchment of the lawis of the cuntrie. That poynt of the Dittay, that *Criſtiane Grahame* come at the pannellis deſyre and curet the bairne, is nocht relevant to infer the cryme of Witchcraft aganis the pannell, except the ſamyn had bene done at hir ſpeciall command, *malis artibus et veneficis artibus*, for the hailling of hir. It is nocht lybellit that the ſamyn was done be the pannell, or at hir command, or be ony Sorcerie or Witchcraft vſet be hir for that effect: And as to *Criſtiane Grahame*, quhat ſcho did, the pannell can nocht be pwneiſt thairfoir. And as to *Criſtiane Grahames* pretendit Confeſſioun, quhilk is nocht producet, it can nocht be reſpectit, *quia eſt dicta ſocia dicti criminis;* nather is the ſamyn relevant, albeit it war trew, as it is nocht, ffor hir confeſſioun can nocht

[1] Supposed, or argued, for the sake of illustration. [2] Notary public. [3] Proved; established legally.

work aganis Margaret Wallace, *quia dicit ſe eſſe ſociam dicti criminis; et dicente ſe ſociam criminis non creditur, quia ex ſuo dicto eſt infamis et ſic teſtimonium perhibere non poteſt; precipué, quia malefici, venefici qui ad ſortilegos divinoſque concurrunt nullatenus ad teſtimonium ſunt admittendi.* And quhair as it may appeir, that *in crimine venefici, vt in caſu excepto, etiam infames admittuntur; hoc verum non eſt niſi cum dupliciti cautela, vna quod confeſſio infamis ſit jurata non enim ei creditur niſi teſti, et non teſti niſi jurato:* The ſecund cautell is, *non fidem facit dictum ſocij niſi confirmatum ſit in tormentis.* Dammoderius, Tit. *de Reprobatione.*

The perſewaris allegis, that the haill allegeances proponit aganis the ffourt Article aucht to be repellit, in reſpect of the Article and haill memberis thairof, tane *coniunctim;* and quh air it is allegit that the Article is nocht relevant, except it war affirmet that *Margaret Wallace* knew *Criſtiane Grahame* to be ane Witche, that pairt aucht to be repellit, in reſpect of the expres woirdis of the Dittay, beiring, 'that the ſaid *Margaret Wallace* affirmet that *Criſtiane Grahame* had als grit knawlege as God him ſelff, and as gif God him ſelff wald cum out of Hevin and cure hir! Albeit the deid-ſtraik war laid on, ſcho could tak it af agane!' As to the argumentis proponit aganis that pairt of the Dittay foundit vpone the Depoſitiones of *Criſtiane Grahame,* that pairt is verrie relevant, and the argument is only proponit aganis the probatioun; to the quhilkis argumentis ſufficient anſueris ſall be maid the tyme of the verificatioun of that poynt of the Dittay; at quhilk tyme, it ſall be maid cleir, baith be Law and practique, that in matteris of Treſſone and Witchcraft, and vtheris caices exceptit, wemen, *ſocij criminis,* and infame[1] perſones ar admittit Witneſſis.

The pannell, adheirand to hir former allegeance, affirmes that that member of the Article of Dittay is nawayis relevant, becaus ſcho is ſummond to anſuer to ane lybell of Witchcraft, and that pairt of the lybell inferrit be the perſewaris repeiting thais odious and vnrehairſable ſpeiches, as ane argument of the pannellis knawlege of *Grahame* to haif bene ane Witch, the ſamyn ar woirdis of Blaſphemie: Quhilkis being plane Blaſphemie, (nocht granting the ſpeiking thairof,) ſcho is nocht haldin to anſuer to that pairt thairof, in this perſute; nather dois the lybell conclude ony thing aganis the pannell, to infer hir to haif knawlege that *Criſtiane Grahame* was ane Witche, (vnder proteſtatioun, the pannell denyis thame altogidder to be of verritie, as ofbefoir,) yit the ſamyn being bot woirdis, can nocht infer ane cryme of Witchcraft, it nocht being confeſſit be the pannell to be trew; nather can it furneiſe a Dittay of Withcraft, quhairvpone ſcho may be accuſet, nor repute nor eſtemit a Confeſſioun, nocht being maid judiciallie, bot allegit ſpokin be ane wyfe to ane vther, vpone certane

[1] Persons declared, or considered, infamous by law.

altercationes arryſeing amangis thame. *Igitur*, &c. And to the anſuer *de ſociis criminum*, thair is na anſuer maid ſpeciallie to that pairt, quhair it is ſaid, *non creditur ſocij teſtimonio, niſi confirmatur tormentis.* As to ony Confeſſioun maid be *Grahame* eftir hir convictioun, *nihil operatur, et non relevat* to put the pannell to ane Aſſyſe thairfoir.

THE *ffyft Article of Dittay* being red, anent the cureing be Sorcerie and Witchcraft of *Margaret Mure*, dochter to vmq^le^ *Archibald Mure*, of ane ſtrange and vnknawin diſeaſe, be taking af the ſaid ſeiknes af the ſaid bairne, be the help and aſſiſtance of *Criſtiane Grahame*, and conſulting with the ſaid *Criſtiane* thairanent, being a notorious Witche; the ſaid *Margaret Wallace*, with the ſaid *Criſtiane Grahame*, haiſing paſt, vnder ſilence and clud of nycht, to the ȝaird of *James Fyndlay*, burges of Gleſgow, quhair thay abaid togidder the ſpace of ane hour, practizeing Sorcerie and Witchecraft for cureing the ſaid bairne, and taking the ſaid ſeiknes af hir; as at lenth is ſet doun in the ſaid ffyft Article: And the ſaid *Margaret* being accuſet thairof—It is allegit be the ſaid *Margaret* and hir prelocutouris, that the ſaid *ffyft Article* is nawayis relevant, nor na pairt thairof; nevir condiſcending in ſpeciall quhat ſcho did, quhat Sorcerie or Inchantment ſcho vſet or applyit, or quhat was practizet be hir for taking af the ſeiknes af the bairne; nor yit condiſcending vpone the meanis of Sorcerie or Witchcraft, quhidder be ſignes, woirdis, croces, incantatioun, invocatioun of the Devillis name; without the quhilkis, Witchcraft can nocht be accompliſchet.—It is anſuerit be the perſewaris, that the allegeance aucht to be repellit, in reſpect of the article of Dittay, beirand the ſeiknes to be tane af the bairne be the pannellis Sorcerie and Witchcraft, practizet be hir and *Criſtiane Grahame*, for the bairnes help, and cure thairof be vnlauchfull meanis.

THE *Saxt Article of Dittay* being red, and the ſaid *Margaret* accuſet thairof, viz. that ſcho, haiſing conſauet ane deidlie haitrent aganis *Robert Mure*, mercheand burges of Gleſgow, thraitnet him with mony outragious ſpeiches, ſaying to him, 'Thow ſall gang hame to thy hous, and ſall bleid at thy noiſe ane quart of bluid, bot ſall nocht die quhill (*until*) thow ſend for me and aſk me forgivenes;' quhairvpone ſchortlie thaireftir, be the ſaid *Margaret* hir Sorcerie and Witchcraft practizet vpone him, he contractit ane grevous and ſuddane ſeiknes, quhairof he deceiſſit; quhilk is confeſſit in preſens of Witneſſes—It is allegit be the pannell and hir prelocutouris, aganis the *ſaxt Article*, that the ſamyn is nocht relevant, for the particuler anſweris and argumentis maid to the haill Articles ofbefoir, quhilk the pannell repeittis, and everie ane of thame, as ane ſufficient allegeance, *brevitatis cauſa*, to ſtay the ſamyn to pas to ane Aſſyſe: And as to hir pretendit Confeſſioun, maid in preſens of Witneſſes, can nocht be reſpectit, becaus *eſt Confeſſio extra-judicialis que non tenet confitentem niſi in judicio fac-*

tam: And albeit it war grantit, as it is nocht, that ſcho maid ony ſic Confeſſioun, ſcho may reſeill[1] thairfra; and ſa is na relevant poynt to pas to ane Aſſyſe; quhilk is confirmet be the authoritie of Salicotus, L. finali, codice *de Probationibus; probationem ſeu Confeſſionem ſponte factam poteſt reus revocare, et confeſſus non eſt condemnandus niſi conſtet de corpore delicti, id eſt damnum datum eſſe malificium facinoris.* Libro 1 de Contraverſiis, cap. 28. *Item,* we haif ane expres text, Lege prima, § Divus, ff. de Queſtionibus; *Confeſſiones reorum pro exploratis facinoribus haberi non oportere, et Confeſſio extrajudicialis non ſufficit ad qualificationem delicti.* Julius Clarus, Lib. 5, § finali, queſt. 55, num. 2. *Immo Confeſſio facta coram Judice non ſedente pro tribunali eſt tanquam facta privata et ex ea reus non poteſt condemnari.*

It is anſuerit be the perſewaris, that the ſaxt Article is verrie relevant, being tane *coniunctim,* becaus it contenis ane promeis to do the deid, the doing of the deid, and the confeſſioun thaireftir of the doing thairof. And as to the Confeſſioun, that the ſamyn is maid extra-judiciallie of ane cryme committit, that extra-judiciall Confeſſioun is lauchfull and valid to condampne the pairtie quha hes confeſſit. Dammoderius, cap. 54, num. vltimo.—It is duplyit be the pannell, that the ſamyn is contrair to the text, and Dammoderius ſpeikis na thing of ane extra-judiciall Confeſſioun; and repeitis thair perticuler anſuer maid to the particuler Articles of Dittay ofbefoir.—The perſewar alſo repeitis the haill particular anſueris maid of befoir.

The *Sevint Article of Dittay* being red, and the pannell accuſet thairby, that a ffyve or ſex yeir ſyne, ſcho being convenit befoir the Seſſioun of the Kirk of Glaſgow, and accuſet be *Mr Archibald Glen,* Miniſter at Carmunnok, ffor rayleing on the ſaid vmq[le] *Robert Mure,* brother-in-law to the ſaid *Mr Archibald,* and raleing on *Elſpeth Arbukle,* his mother, and for taking away of the ſaid *Robert Mures* life be Sorcerie and Witchcraft; and that the ſaid *Margaret,* in revenge thairof, ſchortlie thaireftir, be hir Sorcerie and Witchcraft, laid ane feirfull and vnknawin ſeiknes vpone the ſaid *Mr Archibald,* quhairof, be continuall ſueitting, he deceiſſit; and ſa, was airt and pairt of his daith; quhilk ſcho hes confeſſit, ſenſyne, in preſens of witneſſes. It is allegit and anſuerit be the pannell, *vt ſupra,* againſt the *ſevint Article,* baith anent the fact and pretendit Confeſſioun lybellit, ffor thair is na thing qualifeit of Sorcerie, or Withcraft, or Inchantment, done to the ſaid *Mr Archibald:* for the treuth is, that the man deceiſſit of ane conſumptioun of his lichtis;[2] nather is it lybellit that ſcho inflictit ony thing vpone him be ſignes, croces, inchantit herbis, oyles, claithes, or ony vther meanis.—The perſewaris anſueris, that the ſaid allegeance aucht to be repellit, in reſpect of the ſevint Article of Dittay, relevant in the ſelff, and anſueris maid ofbefoir.

[1] Withdraw; retract; *resile.* [2] Lungs; pulmonary consumption.

THE *Aucht Article* being red, and the pannell indytit, fforſamekill as ſcho, haiſing conſauet ane deidlie haitrent aganis *Williame Mure*, fleſcheour, a fyve yeir ſyne, for calling *Criſtiane Grahame* 'ane rank Witche,' ſcho, in revenge thairof, come to the ſaid *Williame*, vpone the Hie Streit of Gleſgow, and in grit wraithe ſaid to him, 'Go thy wayis hame, bludie boutcher that thow art, thow ſall nevir ſie the calſay[1] agane, bot ſall ſuddanlie ſchute to deid in thy awin chyre!'[2] Accoirding to the quhilk thraitning be the ſaid *Margaret* hir Sorcerie, Devillerie, and Incantatioun, ane ſeiknes was laid vpone the ſaid *Williame*, and vpone the morne thaireftir, in his awin chyre, in grit ſuddantie deceiſſit: Quhilk ſcho hes confeſſit to be of verritie, in preſens of Witneſſes; and ſa is airt and pairt of his death.—It is allegit be the pannell aganis the *Aucht Article, ut ſupra*, with this eik,[3] that thair is nathing qualifeit thairin of Witchcraft done be hir to him, bot that ſcho gaif him evill woirdis, and be thais woirdis he deceiſſit. As to the pretendit Confeſſioun thairin contenit, anſueris thairto *ut ſupra*.—My lord Aduocat repeittis the woirdis of the Dittay, and former anſueris maid be him to the haill former poyntis thairof.

IT is forder allegit be the pannell and hir prelocutouris to *the Nynt Article*, anent the bewitching of *Allane Speiris*, in maner thairin ſpecifeit, without offence of my lord Aduocat, that all thais Articles contenit in the Dittay ar meir[4] fabulous, reſolveing only vpone 'he ſaid and ſcho ſaid.'[5] And forder, oppones to his lordſchip all the authoriteis foirſaidis; and na practiques in the contrar ar producet, bot ane naikit affertioun.—My lord Aduocat repeittis the Dittay, quhilk is verrie relevant, and als relevant a Dittay as ever was maid in Scotland, vpone ſic a ſubiect; quhilk is mair relevant in everie article nor the Dittayis producet aganis *Barbara Naper, Ewfame M'calzeane*, and *Agnes Sampſone*, quha war put to ane Aſſyſe, and convict, &c.[6]

The pannell addis forder, that *damnum inſecutum ex longo intervallo* is nocht relevant; pag. 717, Lib. quinti, ſectionis tertij Martij Dalrio.

THE *Tent Article of Dittay* being red, and the pannell thairby accuſet, beiring that a tua yeir ſyne, or thairby, ane diſcord falling out betuix hir and *Alexander Boig*, ſmyth in Garboillis, about the bying[7] fra hir and *Johnne Dynning*, hir huſband, of ane irne ſtudie to *Williame Wemyes*, ſcho thraitnet to do the ſaid *Alexander* ane evill turne; ſſor performeing quhairof, ſcho, be hir devillerie and Witchcraft practizet be hir, laid ane crewall ſeiknes vpone the ſaid *Alexanderis* bairne, ſa that, with continuall ſueitting, within tua dayis the bairne deceiſſit, &c.—AND ſiclyk, *the Laſt Article of Dittay* being red, and ſcho alſo accuſet thairof, beiring hir to haif bene thir aucht or nyne yeiris bygane ane cowmoun

[1] Causeway, or street. [2] Chair. [3] Addition. [4] Merely. [5] Mere matter of idle hearsay, without foundation in truth, and not supported by legal evidence—'*says he*' and '*says she*.' [6] See their Trials, in this Collection, Vol. II., pp. 230, 242, and 247. [7] Purchasing.

conſulter with Witches, ſpeciallie with *Criſtiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane ſeiker of help and reſponſſes of thame, baith for diſtructioun of dyuerſe perſones, men, wemen, and bairnes, be Sorcerie, Witchcraft, and Incantatioun, and vtheris devilliſche meanis, expreſlie forbidden be the Lawis of Almychtie God, and Municipall Lawis of this Kingdome; as alſo for cureing and help of hir ſelf, in dyuerſe ſeikneſſes, and of dyuerſe hir freindis and acquentance, &c.

It is allegit be the pannell and hir prelocutouris againſt the *Tent Article*, that the ſamyn is nawayis relevant, for the argumentis befoir proponit, with this additioun, that in accompleiſcheing of Witchcraft, practizeing thairof, the maner, forme, and qualitie of Inchanting is neceſſarilie requyret, quhilk is nocht heir lybellit; nather that thair was ony Witchcraft vſet be the pannell be ony Article of the Dittay, and be woirdis, ſignes, croces, ruitis, herbis, poyſone, or be inchantit pictouris, ſpeiches, or be invocatioun of the Devillis name, without the quhilkis Witchcraft can nocht be accompliſchet.—As to the *Laſt member of the Dittay*, it is ſa generall, that it mereittis na anſuer. As to that poynt of the Dittay, anent conſulting with *Criſtiane Grahame* and *Katherene Blair*, that is altogidder generall and irrelevant, nocht condiſcending vpon the tyme and place, *quando et vbi*, nor yit condiſcending quhairvpone thay conſultit, quhidder vpone Witchcraft or vthirwayis; and that the pannell, the tyme of thair meitting, knew thame to be Witches, and conſultit vpone Witchcraft with thame as Witches: And quhair as, ſcho helpit hir freindis, *non relevat*, nocht condiſcending thair names, or quhairwith thay war helpit. Item, it is anſuerit to that pairt of the Lybell, *per totum*, quhair it is ſaid, that the pannell inflictit diſeaſſis, be Inchantment, and Sorcerie, and Witchcraft, nocht condiſcending quhat ſoirt of Inchantment or Sorcerie; *quia vt inquiſitio ſit valida, oportet ſit clara, certas delicti qualitates et circumſtantias continens, de quibus poſſet Judex judicare:* Bot, *de incantamentis in genere nemo Judex poteſt judicare: Ergo*, the ſpecies of the Inchantement man[1] be expreſſit be ſum ſigne or ſpeciall deid; *et ratio eſt, quia ne per incertitudinem, generalitatem, et obſcuritatem tollatur reo defenſio.* Delrio, Lib. 5, ſect. 2, pag. 617. I argu, *a ſimili*, iff it war lybellit, that a man had burſt out ane vther manis guttis with rolling over ane beiſt vpone him, *non relevat*, except ye ſay quhat beiſt, and ſic ane beiſt as mycht haif done it; ffor ane mous could nocht haif done it! Ewin ſua, it being only lybellit, it was done 'be Inchantmentis:' And gif thay war ſpeciall, I wald contend, that thai war naturall meanis, and na Sorcerie. And thairfoir, the generalitie is altogidder irrelevant, takand away my exceptioun; for gif thai war ſpeciall, we mycht reſſone and diſpute quhidder thay war Inchantmentis or no Inchantmentis.

[1] Must.

ITEM, *per totum* to the haill lybell, *non relevat* 'vncouth ſeiknes,' except it war in lyk maner qualifeit, quhat is vncouthe;[1] ffor quhat can the Aſſyſe cognoſce quhat is vncouth or nocht vncouth, it nocht being condiſcendit quhat is 'vncouth ſeiknes,' quhilk is to be judget be thame quhidder it be vncouth or nocht? And for the ſueiting, *nullo modo relevat*, for the proponer ſuat[2] in ane ſeiknes ane haill moneth, and ſueitting is ane naturall purgatioun. *Igitur*, &c.

The Aduocat repeitis the haill Articles aboue writtin, quhilkis ar ſpeciall in thame ſelffis.

THE JUSTICE and ASSESSOURIS continewis thair Interloquitour, vpone the haill allegeances aboue writtin, to the morne; and Ordanis the pannell to be tane bak agane to waird, in the mean tyme. The Aſſyſe wairnet *apud Acta* to compeir agane the morne, the xxj *inſtantis*, in the hour of caus; ilk perſone vnder the pane of tua hundreth merkis.

INTERLOQUITOUR *of the Judges and Aſſeſſouris.*

Mar. 21.—THE JUDGES and Aſſeſſouris, be thair Sentence-Interloquitour,[3] Repellis the haill allegeances aboue writtin, in reſpect of the Dittay, and anſueris maid be his Maieſteis Aduocat, in fortificatioun thairof. And as to *the laſt Article*, quhilk is generall, ffindis the ſamyn relevant, with ony ane of the ten Articles of Dittay, *et non per ſe*: And thairfoir, Ordanis the ſamyn to pas to ane Aſſyſe, viz. the haill ten Articles of Dittay, as relevant; and the laſt general Article, with ony ane of the ten.

ASSISA.

Johnne Lawſoune, mercheand burges of Gleſgow,
Jo^n Dikſoune, mercheand thair,
Andro Fales, mercheand thair,
George Louk, mercheand thair,
Williame Neilſoun, maltman thair,
Robert Bell, wrycht thair,
James Mitchell, tailzeour,
Patrik Bell, elder,
Williame Anderſone, cordiner,
Johnne Gilmour, mercheand,
Airthour Gilmour, mercheand,
James Fallis, mercheand,
Johnne Boyd, meſoune,
Johnne Anderſoun, cordiner,
Andro Ker, cordiner, burgeſſes of Gleſgow.

OBJECTIONS *againſt Aſſiſers.*

It is allegit be the pannell aganis *Johnne Dikſone*, that he can nocht be admittit vpon hir Aſſyſe, becaus thair is inimitie and evill will betuix *Johnne Dynning*, the pannellis huſband and him, vnreconceillit this ten yeir bygane: Lyk as, the ſaid Johnne Dikſone, being dyuerſe tymes travellit with to be reconceillit with the ſaid Johnne Dynning, refuiſet.—It is anſuerit, the allegeance aucht to be repellit as nawayis relevant, becaus inimitie is na caus, except he ſay, that thair was bluid betuix thame.—It is forder allegit, that he can nocht be admittit, becaus he hes behauit him ſelf as pairtie, and hes gevin partiall Counſall, in preiudice of the pannell; in ſa far as ſcho, being tane be the Proveiſt, Bailleis, and Counſall of Gleſgow, without ane Warrand, out of hir awin hous, was put in waird in the Caſtell be thame: In the quhilk taking and committing of hir to waird, the ſaid Johnne Dikſone wes ane ſpeciall aſſiſter of the ſaidis Proveſt and Bailleis.—It is anſuerit be the perſewaris, that the allegeance mereitis nocht ane anſuer, ſeing he did nothing but the dutie of ane boneſt citizen and burges, to aſſiſt the Magiſtrat to apprehend a malefactour, being ſuſpect of ſic haynous crymes.—Johnne Dikſone, being

[1] Strange; indescribable. [2] Sweated. [3] Interlocutory sentence, or judgment.

ſolemlie ſuorne, and declairing that, to his knawlege, thair was nevir diſcord nor inimitie betuix Johnne Dynning and him, the Juſtice thairnpoun, and vpone his declaratioun that he had gevin na partiall counſall in this cauſe, admittis him.

It is allegit aganis *Walter Sterling*, mercheand, that he can (nocht) be vpon this Aſſyſe, becaus he is brother-in-law to vmq[le] *Robert Mure*; thair being ane ſpeciall poynt of Dittay ſet doun aganis the pannell, for allegit iniurie done to Robert Mure.—Anſuerit, aucht to be repellit, becaus thair is na perſute movet aganis the pannell be the kyn and freindis of Robert Mure, and thairfoir ſould be admittit. —It is forder allegit, that Walter Sterling, brother-in-law to Robert Mure, can nocht be admittit, becaus ane Dittay being ſet doun aganis me for ane wrang done to Robert Mure, ilk poynt of Dittay is fund relevant and ordanit to pas to ane Aſſyſe; the ſaid Walter can nocht be ane Aſſyſour aganis me, being perſewit vpone my life.—My lord Aduocat anſueris *ut ſupra*, that nochtwithſtanding thairof he ſould be admittit, except Robert Mure, or ſum of his freindis, war ather perſewaris or defenderis, or vpgevearis of the Dittay, or Informeris to his Maieſteis Aduocat thairin.—The Justice Ordanis Walter Sterling to ſtand by; and to call ane vther.

It is allegit againſt *Williame Neilſone*, elder, that he can nocht pas vpone this Aſſyſe, becaus he is brother-in-law to *Johnne Nicoll*, wryter, quha hes behauit him ſelff as pairtie, in geving informatioun of the Dittay, and is preſent at the bar aſſiſting the perſewaris in this perſute.—Anſueris, the allegeance aucht to be repellit, becaus Johnne Nicoll is nocht a perſewar, nor the Summondis is nocht raiſit at his inſtance.—Williame Neilſoun, being ſuorne, and purget be his ayth of partiall counſall, is admittit be the Juſtice.

Williame Anderſone, cordiner. It is allegit aganis him, that he can nocht be admittit vpone this Aſſyſe, becaus the pannell, haiſing ſkill in chirurgerie, ſauld to him ſum drogis, quhilk he haiſing poſtponit the pannell in payment, ſcho thairfoir perſewit him be ordour of Law thairfoir; quhairvpone ane inimitie fell out betuix thame, quhilk is yet vnreconceilit.—The ſaid *Williame*, be his grit (aith) being purget of partiall counſall, is admittit.

Verificatioun *of the perticuler poyntis of Dittay.*

My Lord Aduocat takis inſtrumentis of the ſweiring of the Aſſyſe; and, for verificatioun of the perticuler poyntis of Dittay following, vſes and produces the probatioun and Witneſſes efter ſpecifeit. And firſt, for Verificatioun of *the ffirſt Article* (*of Dittay*) anent *Cuthbert Greg*, produces *Charles Pollok* and *Margaret Dynning* as Witneſſis, deſyreing thair Depoſitiones to be tane.

Chairlis Pollok, couper, burges of Gleſgow, ſworne judiciallie, and examinat in preſens of the Judges, pairteis, and Aſſyſouris, and purget of partiall counſall, mareit, of the aige of threttie yeiris, declairis, that a thre yeir ſyne, or thairby, ane differ[1] being betuix Cuthbert Greg and Criſtiane Grahame, for ane dog quhilk Criſtiane deſyret fra him, and he refuiſet, anſuering to hir agane, 'I rather ȝe and my huſſie[2] baith (meaning be *Margaret Wallace*) war brunt or[3] ȝe get my dog!' Quhairof *Margaret Wallace* getting knawlege, ſcho comes to *Cuthbert* and ſayis to him, 'ffals land-loupper loun that thow art, ſayis thow that Criſtiane Grahame and I ſall be brunt for Witches? I vow to God I ſall do to ȝe ane evill turne!' And declairis, that, within foure or fyve dayis thaireftir, the ſaid *Cuthbert* fell ſeik. Being inquyret, gif he hard hir ſay thir woirdis, 'that *he* (*ſhe*)

[1] Quarrel; *difference*; altercation. [2] *Cummer*; gossip. [3] Rather than.

ſould mak *hir* (*him*), within few dayis, nocht of habilitie to wyn ane caik of breid?' Denyis that he hard ſic woirdis—bot only that ſcho ſould 'do him ane evill turne.' Sayis, he ſaw *Cuthbert Greig*, the tyme of his ſeiknes, ſueitting and brocheing[1] in ane vncouth ſeiknes, fairlie handillit, quhairby he was nocht able to gang; bot knawis nocht how lang he ſwat, or abaid in that eſtait. Demandit, gif he ſaw Margaret Wallace cum in to Cuthbert, at ony time of his ſeiknes? Declairis, he ſaw hir nocht within that hous; and forder, knawis nocht anent that ffirſt Article of Dittay.

Margaret Dynning, the ſpous to Andro Lennox, ſuorne and examinat vpone the ffirſt Article, concerning Cuthbert Greg, and deſyret to tell the treuth, ſa far as ſhe knawis thairanent; Depones, that the tyme of Cuthbertis ſeiknes, the deponer and Margaret Montgomerie, with Margaret Wallace, paſt all thre togidder vp to Cuthbertis hous, to viſſeit him, the tyme of his ſeiknes; at thair in-cumming, declairis, ſcho ſaw Margaret Montgomerie, with Margaret Wallace, paſs to his bed-ſyde quhairin he lay, and that the ſaid Margaret Wallace ſat doun with hir bak to him, the deponer hir ſelf nocht being able to wyn ben the hous, becaus of the thrang of peopill in the hous, at that tyme: And forder knawis nocht.

For *the Second poynt of Dittay*, concerning *Johnne Robertoun*, querriour, deſyres the ſaid Johnne Robertoun, as perſewar, his ayth to be tane, and that poynt of Dittay to be ſuorne be him, gif he has juſt caus to perſew the pannell as giltie thairof? Quha, being ſolemplie ſuorne, declairit, that the ſaid Margaret Wallace avowit 'to be avengit vpone his fflefche!' And that ſchortlie thaireftir, conforme to the Dittay, the ſeiknes was laid vpone him; and thairfoir, hes juſt caus to perſew the ſaid Margaret, for that poynt: And eikis[2] thairto, that ſen the making of that vow be hir, he was nevir able to wyn him ſelff fyve ſ. (ſhillings.) Quhairvpone my lord Aduocat aſkit inſtrumentis.

Chairles Pollok being producet, and ſuorne vpone the ſecund Article of Dittay, anent the ſaid Johnne Robertoun, querriour; declairis, he knawis na thing thairof, except allanerlie, that he ſaw him hevelie diſeaſit.

As to the *Thrid Article of Dittay*, referris the notorietie of the pannellis giltines thairof to the Aſſyſe.

For verificatioun of *the ffourt Article*, my lord Aduocat producet Criſtiane Grahames Depoſitioun, tane be *my lord Archebiſchope of Gleſgow*. As alſo, produces *Marioun Mitchell*, the ſpous of Johnne Hunter, and deſyres hir to be examinat, and her Depoſitioun to be writtin.

Marioun Mitchell, the ſpous of Johnne Hunter, taſker,[3] ſuorne, and examinat

[1] Commonly pronounced *broiching*; in the last stage of exhaustion, through profuse perspiration. The English word *sweltering* conveys something of the same meaning. [2] Adds; subjoins. [3] Day-labourer.

vpone the ffourte Article of Dittay, in prefens of the Judges, Affyfouris, and parteis, judiciallie, Depones, that four yeir fyne, or thairby, Margaret Wallace and Robert Stewart come to the duelling-hous of Alexander Vallange, in Glefgow, quhair the deponer was fervand for the tyme, and callit for ane choppin of aill; quhilk was brocht be ane boy to thame, namet James Symfone; and in drinking thairof, betuix Robert Stewart his taking the cope and offering it to Margaret Wallace, the faid Margaret tuik ane fudden brafche of feiknes, vnknawin to the deponer quhat feiknes it was, quhairin the faid Margaret was fa extremelie handillit, that fcho was liklie to ryve hir felff:[1] Thaireftir fcho cryis, 'Bring me hither my deir burd!'—And Margaret Montgomerie, the guid-wyfe of the hous, being prefent, anfueris hir, 'Quhilk deir burd wald ȝe haif? I beleif,' fayis fcho, (thinking it had bene *Johnne Dynning*, hir hufband,) 'he is nocht at hame!' 'Na,' anfuerit Margaret Wallace, 'bring me *Crifliane Grahame*, my deir burd!' All this quhyle, Margaret Montgomerie was halding hir be the ane hand, and Criftiane M^c^clauchlane be the vther. Thaireftir, at hir defyre, Robert Stewart paft, and with grit dilligence brocht Criftiane Grahame to hir, at quhais fuddane cuming, Margaret Montgomerie fayis to Robert, 'Jefus faif ws! I beleif thow hes met her be the way!' And Criftiane Grahame anfuerit, 'ffayth, he met me nocht, bot come and brocht me out of my awin chalmer; and fra I hard that my burd was fa difeafit, I fped me hither!' Sayis, thaireftir, that Criftiane Grahame tuik Margaret Wallace be the fchaikill-bane,[2] and kift hir; and in hir airmes cayreit hir doun the ftair, faying to hir, 'Nothing fould aill hir.' Eftir quhais outgoing, Margaret Vallange, dochter to the faid Margaret Montgomerie, ane infant bairne of foure yeir auld, followit thame doun the ftair; and in the ganging out at the ȝet,[3] over the dur-threfchold, fcho fell doun in a fuddane and grevous payne, and grat vehementlie. Incontinent thaireftir, the faid Margaret Wallace come bak agane, and declairit that the bairne was greting at the ftair-fute; and defyret hir mother to bring her vp. And thaireftir, the bairnes mother cuming to hir and taking her vp, the bairne cryis, 'Mother, mother, ding me nocht, for thair is ane preyne[4] rafchet throw my fute!' And the bairne, being brocht vp to the hous, grat continuallie all that nycht, and quhill[5] the morne at that fame tyme of the day. The Deponer forder declairis, that fcho and the bairnes father and mother fat vp all that nycht, and walkit[6] the bairne; and that vpone the morne thaireftir, the faid Margaret Wallace come to viffit the bairne, and defyret Margaret Montgomerie, hir mothir, to fend for Criftiane Grahame, making all that tyme ane grit mone[7] for the bairnes feiknes: To quhome Margaret Montgomerie anfuerit, 'I haif nothing ado with Criftiane Grahame, and

[1] This attack was probably a hysterical affection, or rather a kind of convulsion fit. [2] Wrist. [3] Gate; wicket. [4] Pin. [5] Until. [6] Watched. [7] Moan; lamentation.

will nocht ſend for hir! ffor gif God hes laid on that ſeiknes on my bairne, he will, at his awin pleſour, tak it af agane!' Sayis thairefter, that Margaret Wallace maid anſuer to hir, 'Gif ȝe knew of Criſtiane Grahame ſkill, and quhat ſcho can, ȝe wald nocht refuiſe to ſend for hir; for ſcho can do alſe mekill as God in the Heavin!' Deponis forder, that ſchortlie thaireftir, Margaret Wallace, by[1] the ſaid Margaret Montgomereis knawlege, brocht the ſaid Criſtiane Grahame in to the hous, the bairne being lying as ane deid ſtock in the bed, and haiſing gevin over greting for the tyme; and at thair incoming, ane heip of grene webbis[2] being lying on the fluir, Margaret Wallace lap over the ſame, and cumis to the bairne, and takis hir vp out of hir bed, and ſettis hir on Criſtiane Grahames knie; and declairis, that eftir the bairne had ſittin ane ſchorte ſpace vpone the ſaid Criſtianes knie, ſcho grew better, and eftir that mendit.

For verificatioun of *the ffyft poynt*, my lord Aduocat producet certane Depoſitiones tane befoir *the Biſchope of Gleſgow*;[3] with ane vther Depoſitioun tane befoir *the Commiſſar of Gleſgow*; as alſo, producet certane Depoſitiones tane be the ſaid *Archebiſchope*, at command of the Secreit Counſall; and thairwith produces Andro Mure, chirurgane, as Witnes; deſyring him to be ſuorne, and his Depoſitioun to be writtin.

Andro Mure, chirurgane, mareit a ſevintene yeir ſyne, of the age of xlij yeiris, ſuorne, and purget of partiall counſell; being inquyret, quhat he knawis concerning the ffyft Article of Dittay, red in his audience? Depones, he knawis nothing of Margaret Mures ſeiknes ſpecifeit in the ſaid Article, except that he himſelf, cuming doun the Brig-gait,[4] he ſaw Criſtiane Grahame cum furth of Marioun Mures hous; quha thaireftir come to the deponer, and deſyret him to gang in to the ſaid Marioun: And the deponer, at hir deſyre, haiſing paſt in to the hous, at his incuming ane roiſtit hen was ſett doun on the buird;[5] and the deponer, with Dauid Scheirar and the ſaid Marioun Mure, ſat doun at the buird togidder; and within ane ſchorte ſpace thaireftir, Margaret Wallace come in to thame: Declairis, at Margaret Wallace incuming, ane guiſe[6] was ſett doun on the buird: And the deponer, perſaveing that ſic intertenement wald draw him to charges, he payit his choppine of wyne and come his way, and left the reſt of the cumpanie behind him. And forder knawis nocht.

For verificatioun of *the Saxt Article, Sevint, and Aucht Articles*, produces the Depoſitioun of Alexander Montegomerie and vtheris, ſubſcryuit be *my Lord of Gleſgow*; togidder with ane Teſtimoniall of the Miniſter, teſtifeing Mr Alexander Montgomerie his ſeiknes, that he was nocht able to travell, without hazard

[1] Without; contrary to. [2] Webs of newly weaved, or unbleached, linen cloth. [3] James Law, Archbishop of Glasgow; who had been translated from the See of Orkney, *anno* 1610. [4] The Bridge-gate of Glasgow. [5] A roasted fowl was set upon the table. [6] Goose.

of his lyfe: And referris the notorietie of the pannellis giltines of the ſaidis Articles to the Aſſyſe.

For preveing of *the Nynt Article of Dittay*, produces Robert Dykes, Johnne Pincartoun, Thomaſone, as Witneſſes, deſyreing thair Depoſitiones to be tane, for the Aſſyſe better informatioun.

Robert Dykis, maltman in Ruglen, mareit, ſuorne and examinat, in preſens of the Judges, Aſſyſouris, and pairtie, in judgement, vpone the Nynt Article, to declair the verritie, and purget of partiall counſell, Depones, that at command of vmq^le^ Allane Spens, the deponer come to Johnne Dynning, and deſyret ane ſicht of his elwand,[1] and, conforme to the Dittay, the ellwand was brokin; and a fyftene dayis thaireftir, or thairby, the ſaid Allane Spens being in Gleſgow, and fleing ane ſchoure,[2] come befoir Johnne Dynningis buthe-dur,[3] quhair the deponer hard Margaret Wallace, Johnne Dynningis wife, ſay thir woirdis to Allane, 'Away, deboiſchet knave!' Depones, the ſaid Allane Spens fell ſeik; bot knawis nocht how ſone eftir thais woirdis war ſpokin this ſeiknes fell[4] to him. Declairis, he come in to him the tyme of his ſeiknes, and ſaw him hevelie diſeaſit with continuall ſueitting.

Thomas Wilkyne, burges of Ruthirglene, mareit, ſuorne in preſens of pairtie, Judges, and Aſſyſouris, in judgement, Depones, he knawis nocht Margaret Wallace, befoir his cuming to Edinburgh. As to that Article of Dittay concerning Allane Spens ſeiknes, declairis, he was hevelie diſeaſit with ane ſuddane and grevous ſeiknes, quhairof he deceiſſit; bot knawis nocht quhat or quha war the cauſeris thairof.

Johnne Thomeſone, burges of Ruthirglene, mareit, and ſuorne vpone the nynt Article of Dittay red to him in judgement, in preſens of the pairteis, Judges, and Aſſyſouris, is conforme to the ſaid Thomas Wilkyne.

Johnne Pincartoun, ſuorne and demandit vpone the nynt Article, quhat he knawis thairintill? Depones, he was narreſt dur nychtbour[5] to Allane Spens, and ſaw Johnne Dynningis elwand brokin, at quhilk tyme the ſaid Johnne Dyning and Allane Spens war likelie to go by the earis for breking of the ſaid elwand. Declairis, that he hard Margaret Wallace, ſcho being preſent with hir huſband, ſay to him, 'Go ȝour wayis joy, let him allane,' (meaning be Allane Spens,) 'I ſall tak ane amendis thairof!' Sayis he knew that Allane Spens fell in ane heavie diſeas, bot knawis nocht quhat was the caus thairof.

For verificationn of *the Tent Article* of Dittay, my lord Aduocat vſes the aithe and declaratioun of *Alexander Boig* in Garboillis, perſewar thairof, and deſyres that Article to be ſuorne be him to the Aſſyſe, for thair better informa-

[1] Ell-wand, yard measure. [2] For shelter from the shower. [3] Shop door. [4] Happened. [5] Next-door neighbour.

tioun: Quha being ſuorne, declairit that he had juſt caus to perſew the ſaid Article, as is ſet doun thairintill, aganis the pannell.

Produces alſo George Thomeſone and James Pollok, Witneſſes, deſyreing thair Depoſitiones to be reſſauit for preving of the ſaid tent Article of Dittay.

George Thomeſone, duelland vnder Sir George Elphingſtoun of Blitheſwoid, kny^t^, ſuorne and examinat in judgement, Quhat he knawis anent the ſaid tent Article of Dittay? Depones conforme thairto, that he hard Margaret Wallace and Alexander Boig flyteing with vther; and that ſcho ſaid to him, in a grit rage and furie of mynd, that ſcho ſould 'do to him ane evill turne,'—or ſould 'gar get to him ane evill turne!' And within thre dayis thaireftir, the ſaid Alexander his bairne fell ſeik, and deceiſſit of ſueitting and vther grevous panes.

James Pollok, gairdner to Sir George Elphingſtoun, ſuorne and examinat vpone the ſaid Article, Depones, he being working at the hedge within the ȝaird, he hard Margaret Wallace and Alexander Boig flyteing togidder; and that in hir anger ſcho ſaid to him, ſcho ſould 'do to him ane evill turne!' And ſchortlie thaireftir, his bairne contractit ane ſeiknes, and deceiſſit.

My lord Aduocat takis inſtrumentis of the Witnes judiciall declaratioun aboue writtin; quhilk he repeitis to the Aſſyſe, with the vther Depoſitiones producet be him.

THE JUSTICE and ASSESSOURIS continewis this dyet to the morne. The Aſſyſe wairnit to be preſent the morne, at xj houris; ilk perſone vnder the pane of iij^c^ merkis.

OBJECTIONS *be the Pannell to hir pretendit* CONFESSIOUN, *and haill Probatioun adducet.*

Mar. 22.—IT IS OBJECTIT be the pannell and hir prelocutouris aganis *hir pretendit Confeſſioun*, maid be hir befoir the Lordis of Secreit Counſell, that the ſamyn can preve nathing of the haill Dittay, nor na pairt thairof. And as to that pairt of hir allegit Confeſſioun, quhair as ſcho confeſſit 'that ſcho was content, in caice it ſould be provin that ſcho was in *Cuthbert Gregis* hous, to grant the haill Dittay!' Anſueris thairto, that is na Confeſſioun of the Dittay, nor of na pairt thairof; ffor the Dittay is ſet doun upone Witchcraft, and that the pannell practizet Witchcraft vpone the perſones contenit in the Dittay, be Sorcerie and Inchantment; ſcho hes nocht confeſſit the ſamyn be hir Depoſitioun, nor na pairt thairof; ſua that hir Depoſitioun can be na probatioun of Witchcraft, nor of practizing thairof; bot only, that gif it ſall be provin aganis hir, hir being in Gregis hous, quhilk ſcho hes denyit, ſcho hes thairin committit onlie a lie, and being perſewit and provin, is content to vnderly the pwneiſchment appointit aganis Leaſing-makeris. *Secundo*, be the Confeſſioun contenit in hir

Depoſitioun befoir the Counſell, ſcho is only content, gif that haill Article be provin aganis hir, than to confes all the reſt to be trew; bot albeit it be provin that ſcho was in the hous, it is nocht confeſſit thairby that ſcho was ane Witche. *Tertio,* it is nawayis provin be the Depoſitioun producet, that ſcho was within the hous, becaus thair is only ane woman producet as a Witnes to verifie the ſame. It is forder allegit, that thair can be na probatioun vpone that hir Confeſſioun maid befoir the Counſell, becaus the ſamyn is na poynt of Dittay.

It is anſuerit be the perſewaris, as to the obiectioun maid againſt the Depoſitioun maid be the pannell befoir the Counſell, that obiectioun aucht nocht to be reſpectit, in reſpect of the Judiciall Confeſſioun maid befoir the Lordis of Counſall, quhilk bindis hir; be the quhilk it is manifeſt, that ſcho hes denyit the treuth, in reſpect of the probatioun led be dyuerſe of the Witneſſes producet, verifeing hir to haif bene in Gregis hous the tyme of his ſeiknes, quhilk the perſewaris referris to the Inqueiſtis knawlege and Witneſs Depoſitioun. And deſyres it may be rememberit to the Aſſyſe, quhat ſentence was gevin aganis *Patrik Cheyne,* vpone the lyk Depoſitioun.

It is forder allegit be the pannell, that the Depoſitioun maid befoir my Lord of Gleſgow, the ſamyn can mak na fayth, in reſpect his Lordſchip had na warrand to that effect.—It is anſuerit be the perſewaris to that obiectioun, that the ſamyn aucht to be repellit, in reſpect of my Lord of Gleſgowis Judiciall Declarationn maid be his Lordſchip, that he had ane ſpeciall Letter direct to him be the Lordis of Secreit Counſell, for taking of the ſaidis Depoſitiones, and of the article ſubioynet to hir Depoſitiones ſubſcryuit be the Clerk of Counſell.

It is allegit be the pannell, that nather the ffirſt nor ſecund Depoſitioun of *Criſtiane Grahame* can be reſpectit: *ffirſt,* becaus it is nather hir principall Depoſitioun, nor Extract thairof; nocht the principall, becaus it is nocht ſubſcryuit be hir, nocht the Extract, becaus nocht (ſubſcryuit) be ane Clerk of Court: *Secundo,* can preve nathing, becaus it is maid, ſcho nocht being ſuorne to that effect: *Tertio,* it is maid be the pairtie being abſent aganis quhome it is deponit, quha, gif ſcho had bene requyret, wald haif compeirit, and offerit to haif bene confrontit with hir; quha, gif ſcho had bene confrontit, wald haif denyit the ſamyn: Lyk as, ſcho cum of ſet purpois to the Tolbuth, befoir hir Convictioun, and offerit hir ſelff to haif bene confrontit, quhilk was denyit. *Laſt,* hir Depoſitioun can work nathing aganis the pannell, being ane condampnet perſone; and the Depoſitioun aucht nawayis to be reſpectit, except it war inſtantlie verifeit be the proces, that befoir the making of the ſaid Depoſitioun, or the tyme of the making thairof, that the ſaid Criſtian Grahame had confeſſit the haill poyntis of Dittay than laid to hir charge: ffor as the woirdis ar conſauet, thay ar ſpokin be compariefone, that eftir ſcho had denyit the poyntis of Dittay laid to hir

charge, and declairit hir ſelf to be altogidder innocent thairof, and the pannell being at that tyme ane honeſt woman, ſua repute and haldin, ſcho ſayis, 'ſcho was als frie of Witchcraft as ſcho or ony vther in the toun!' Forder, the Confeſſioun can nocht be reſpectit, becaus it is nocht maid befoir ane Judge haiſing power to tak her Confeſſioun, thair being na Commiſſioun producet for taking of the ſaid Confeſſioun. Nixt, the Depoſitioun beiris nocht that ſcho was ony wayis interrogat or ſpeirit[1] at, and is nocht maid in judgement, becaus the Aſſyſe was than incloſet, being than hir Judges. Laſt, it beiris nocht that this pannell was airt or pairt of ony Sorcerie, bot of ſic deidis as ſcho did, and confeſſit to haif done: And referris to the Aſſyſe, hir Confeſſioun, that ſcho was innocent of all. And as to the worſettis,[2] thay ar na pairt of Witchcraft, be reveing[3] or drawing thame furth of hir purſe.

It is anſuerit thairto be the perſewaris, that the obiectiones maid aganis the tua Depoſitiones producet is nawayis relevant, and is nocht to be reſpectit be the Aſſyſe, becaus the ſamyn is ſubſcryuit be *my Lord Archbiſchope of Gleſgow*, as Lord of the Regalitie, and quha was preſent the haill tyme of Criſtiane Grahames tryell, nocht onlie as Lord of the ſaid Regalitie, bot alſo as being ane of the Lordis of his Maieſteis Previe Counſall; and thairby, be vertew of his office and authoritie, haiſing ſufficient power to tak cognitioun of quhatſumeuir ryote or offence committit to ony of his Maieſteis ſubiectis, be quhatſumeuir maner of way, within that pairt of his dyocie,[4] or ony pairt of the kingdome. *Igitur*, &c. —To the quhilk it is anſuerit be the pannell, that the Depoſitioun was nocht ſubſcryuit be *my Lord of Kilſythe*, to quhome the Commiſſioun was grantit, bot is allanerlie ſubſcryuit be the Proueiſt and Bailleis of Gleſgow, quha ar pairteis: Lyk as preſentlie, at the dyteing heirof, Gabriell Cunninghame, ſtanding at the bar, hes profeſſit him ſelff to be a pairtie and informer to my lord Aduocat. Laſt, her Depoſitioun can nocht be reſpectit, becaus ſcho alleges hir ſelff to be participant of the ſame cryme; and ſa hir Depoſitioun, of the Law, can mak na fayth, except ſcho had confeſſit ſcho had maid hir Depoſitioun or Confeſſioun eftir tortour.

To the quhilk it is anſuerit be the perſewaris, that the ſaidis Depoſitiones ar ſubſcryuit be the Proveiſt and Bailleis of Glaſgow, quha war a pairt of the Commiſſioneris nominat and appointit to the tryell of the ſaid Criſtiane Grahame, as alſo ſubſcryuit be vther tua men of grit credeit, viz. Mr Johnne Bell and Mr Robert Scott, Miniſteris of Glaſgow, quhais ſubſcriptiones ar ſufficient to geve authoritie to the Depoſitiones, as evir has bene fund in this judgement, in all matteris of Witchecraft, and ſpeciallie, in the proces of *Euphame Ṃcalzeane*, *Barbara Naper*, and *Agnes Sampſoun*. The laſt pairt aucht nocht to be

[1] Enquired. [2] The coloured worsted threads formerly noticed. [3] Stealing. [4] Diocese.

reſpectit, in reſpect *ſocij criminis* ar reſſauit and admittit in all crymes of Treſſone, Erracie,[1] and Witchecraft.

Quhairvnto the pannell and hir prelocutouris anſueris to thais tua memberis of my lord Aduocattis anſueris, that the tua Miniſteris befoir quhome Criſtiane Grahame hir Depoſitioun was maid, that thai war honeſt men, it is nocht denyit; bot it followis nocht, becaus thay are honeſt men, thairfoir thay had power to tak hir Depoſitioun, in ane matter concerning hir lyfe, without Commiſſioun. For anſuer to the proces allegit aganis *Euphame M'calzeane, Barbara Naper*, &c., agreis thairto, in regaird thay war examinat be Mr James Carmichell, to quhome ſpeciall Commiſſioun was gevin for that effect. Laſt, it is declairit be the pannell, that evin in the cryme of Erracie or Leſe-maieſtie, a pairtner of ane cryme[2] is nocht to be credited without tortour; and repeittis the tortouring of *Sprote* in Treſſone, becaus he was partiner of the Treſſone.

It is objectit be the pannell and hir prelocutouris, aganis the Depoſitioun maid be *Margaret Grahame*, dochter to Criſtiane Grahame, befoir the Commiſſar of Gleſgow, it can nocht be reſpectit; ffirſt, becaus it is not maid judiciallie, befoir ane Judge haiſing power to that effect: *Secundo*, befoir ane Commiſſar, without ane Commiſſioun, quha had na power in matteris of Witchcraft, and vtheris concerning lyfe and daithe: *Tertio*, was nocht requyret Witnes befoir ane Judge haiſing Commiſſioun, nor ſworne to that effect: *Quarto*, hir Depoſitioun can nocht be reſpectit, in reſpect of hir age, ſcho nocht being paſt xviij[3] yeiris: *Quinto*, in all hir Depoſitiones, nevir a word deponet that ſcho knew Margaret Wallace to be ane Witche, or a practizer of Witchecraft; bot only that hir mother and ſcho paſt to the ȝaird togidder, tynt hir pantoun, quhilk was put one agane be Criſtiane Grahame, &c.: *And* quhair, it is affirmet in the Depoſitioun, that ſcho tuik ane ſchooe, and pat in ſum ſeidis thairin, that is nocht lybellit, and can nocht be reſpectit, becaus nathing followit thairupoun: *Laſt*, na Depoſitioun can be reſpectit at all, of ony perſone, as Witnes, bot only ſic as ar producet in Judgement,[4] to the effect the pannell may object aganis thame, quhidder thay may depone aganis hir or nocht. And thairfoir, of all Law, it is inviolablie obſeruet, that na faith is gevin to Teſtimoniallis, bot as Witneſſes, in a matter of fourtie ſchillingis.

It is anſuerit be the perſewar, as to the allegeance and objectioun aganis *Margaret Grahame*, the ſamyn aucht to be repellit, it being tane befoir ane Judge-Ordiner, judiciallie, viz. the Commiſſar of Gleſgow: And as to hir age, ſcho hes deponet ſcho is paſt xiiij yeiris, quhilk is referrit to the Aſſyſe knawlege; and that than ſcho mycht haif mareit lauchfullie, mekill mair to beir witneſſing in

[1] Heresy. [2] *Particeps criminis.* [3] *Sic;* xiij? [4] This is the first time that this objection is recorded as having been started by the Counsel for the pannel.

obſcure factis, ſic as ony thing concerning vmq^le Criſtiane Grahame and Margaret Wallace, quhais companie ſcho reſoirtit daylie. And forder, the perſewar referris to the Aſſyſe knawlege, quhat thay knaw of hirDepoſitioune; and ſpeciallie, gif it was grantit befoir my Lord of Gleſgow, the pannell hir ſelff, and ſum of the Inqueiſt: And forder, producet the dome and ſentence of convictioun to the Aſſyſe, quhair the Proveiſt and Bailleis of Gleſgow war Commiſſioneris appointit and ſet for tryell of Criſtiane Grahame, and ſa had power to reſſaue Criſtiane Grahames ayth, for haiſing Commiſſioun thairto.

It is anſuerit be the pannell, as to that pairt of the anſuer anent Margaret Grahames age, the Depoſitioun producet beiris na ſic thing.—My lord Aduocat, for anſuer thairto, declairis, he produces ane vther Depoſitioun of hiris of the ſame dait, beiring hir former age: Quhilk is referrit to the Aſſyſe.

Item, the pannell anſueris to that poynt, anent the productioun of Criſtiane Grahames Sentence of Convictioun, that the pannell acceptis the ſame; and proteſtis that the perſewaris repetitioun thairof, for inſtructing of the Aſſyſe, anent that alledgeance proponit be the pannell, that Criſtiane Grahames Depoſitioun, beiring Margaret Wallace to be airt and pairt of all confeſt be hir to haif done, preves nawayis hir to be giltie of Witchcraft; becaus the convictioun producet, beiris hir to haif denyit all the poyntis of the lybell anent Witchcraft; and ſcho confeſſes that ſcho was pairt-taker of ſic thingis as ſcho confeſſes hir ſelff to haif done, it man (*muſt*) be of na deidis impoirting Witchecraft.—The laſt objectioun proponit be the pannell is nocht to be reſpectit, in reſpect of Criſtiane Grahames Confeſſioun and convictioun producet; quhairin ſcho is convict of tua poyntis, conforme to hir awin Confeſſioun, viz. the ſecund and fourt poyntis of Dittay quhairupone ſcho was indytit.—It is anſuerit be the pannell, that the ſaid convictioun proceidis vpone the admitting of the haill Articles thairof to the knawlege of ane Aſſyſe, ſua that the finding of hir giltie of ony of the Articles is nocht the grund of the ſentence of Convictioun; ffor thais tua Articles, a pairt quhairof ſcho is convict, was nocht relevant without the haill Articles had bene admittit; and forder, thir tua poyntis quhairof Grahame is convict, is na poynt of our Dittay.

It is objectit be the pannell aganis *Marioun Mures* Depoſitioun, ſubſcryuit be my Lord of Gleſgow, the ſamyn can nocht be reſpectit, for the reſſones foirſaidis; with this additioun, that gif the ſaid Marioun Mure war now producet as Witnes at the bar, ſcho wald be repellit; for this reſſone, becaus be the Depoſitioun it is confeſſit that ſcho is father-ſiſter to the bairne quha is alleget to haif bene bewitchet or curet be the pannell, as being within degreis-defending to the ſaid bairne mentionet in the Dittay. And forder, it is objectit, that ſcho had gevin partiall counſall in the caus, quhilk defens is tane fra us be productioun of

ane Teſtimoniall, and nocht hir ſelff. And repeittis all the reſt of the objectiones aganis the vther Teſtimoniall.—The laſt objectioun aucht to be repellit, in reſpect of the Depoſitioun of *Marioun Mure*, tane be my Lord of Gleſgow, quha had Commiſſioun of the Counſell, as he hes deponit, and is teſtifeit be James Prymrois, clerk of the Counſell. Lyk as, the ſamyn Depoſitioun is ſubſcryuit be the Laird of Mynto, and the Proveiſt and Bailleis of Gleſgow, Commiſſioneris for Tryell of the ſaid Criſtiane Grahame: And as to the objectioun, that ſcho was within degreis-defending to the bairne, it is anſuerit directlie, that Commiſſioun be the Counſell for hir examinatioun, the pannell being preſent, and nathing objectit be pannell in the contrair, is ſufficient to elyd[1] that pairt of the ſaid objectioune.

It is objectit be the pannell aganis the Depoſitioun of *Mr Alexander Montgomerie* producet, that the ſamyn can mak na fayth, it nocht being maid befoir ane Judge, nor he ſuorne to that effect; nor nane inquyreing ſic thing of him: And ſpeciallie, aucht to haif bene ſummond befoir ane Judge-Ordiner, and to haif deponit judiciallie; in reſpect that letteris war direct, ſummonding him to compeir befoir the Juſtice in this judgement, and hes nocht compeirit, being ſummond to that effect; and ſpeciallie, his Depoſitioun could nocht haif bene reſſauit gif he had compeirit, becaus it wald haif bene objectit contrair him, that he and Margaret Montgomerie are brother-bairnes of the hous of Heſil-heid,[2] quhais dochter is allegit to haif bene witchet, be ane ſpeciall poynt of Dittay gevin in aganis this pannell; and ſa, his extra-judiciall Confeſſioun out of all judgement, ſubſcryuet be him without Witnes, could nocht be reſpectit.—To the quhilk the perſewaris anſueris, that this laſt objectioun aucht to be repellit, in reſpect of the Teſtimoniall producet, beiring Mr Alexander to be ſeik, ſubſcryuit be ane Miniſter, quhilk excuiſes his abſence: Quhilk Depoſitioun is referrit to the tryell of the Aſſyſe.

In reſpect of the quhilkis Depoſitiones and Verificationes producet to the perſones of Inqueiſt, for thair forder informatioun of the pannellis giltines of the perticuler poyntis of Dittay aboue written, Proteſtis for Wilfull Errour aganis thame, gif thay acquit.

Verdict. The Aſſyſe, for the maiſt pairt, Fyles *Margaret Wallace* of the *firſt* Article of Dittay,[3] anent Cuthbert Greg, couper, and haill circumſtances thairof: And ſiclyk, all in ane voce, ffyles hir of the *fourt* poynt of Dittay, and haill circumſtances mentionet thairintill, anent the conſulting with vmq[le] Criſ-

[1] Cut off, &c. Lat. *elidere.* [2] The Montgomeries of Hazelhead, a respectable family in Ayrshire.
[3] The Articles of Dittay of which the pannel is found guilty, are rehearsed at length at the commencement of the Trial, being the only part of the Dittay preserved at full length in the Record. The remainder of the points are pretty largely recapitulated in the preceding arguments, which are of great importance, as they completely illustrate the state of the Law and practice on this extraordinary subject. More freedom of discussion was permitted in this Trial, than in any of the previous cases of a similar nature.

tiane Grahame, ane notorious Witche, for cureing of hir ſelff of ane ſuddane diſeaſe, be taking the ſamyn of hir, and laying it vpone Alexander Vallange bairne; and thaireftir cureing the ſaid bairne of the ſaid diſeaſe, in forme and maner ſpecifeit in the Dittay: AND lykwayis, for the maiſt pairt,[1] ffyles hir of the *fyſt* poynt, anent the cureing of Margaret Mure of the ſeiknes quhairwith ſcho was viſſeit, be Sorcerie and Witchecraft, and conſulting with Criſtiane Grahame for that effect, in maner contenit in the ſaid *fyſt* Article: AND in lyk maner, all in ane voce, ffyles hir of the *tent* Article of Dittay, and haill circumſtances thairof, anent the ſeiknes laid vpone Alexander Boig his bairne, be Sorcerie and Witchcraft, in maner ſpecifeit in that Article: AND laſt, all in ane voce, ffyles hir of the generall poynt, as ane cowmoun conſulter with Witches, thir aucht or nyne yeiris, namelie with vmq^le^ Criſtiane Grahame, laitlie convict and brunt for ane notorious Witche, and with Katharene Blair, and vther Witches, and ſeiken[2] of help and reſponſſis of thame, alſweill for cureing of hir ſelff of dyuerſe ſeikneſſes, and cureing of hir ffreindis and acquentance, as for inflicting of dyuerſe crewall diſeiſſis vpone dyuerſe perſones to quhome ſcho buir ony haitrent; and diſtructioune of thame thairby, be devillrie, Incantatioun, and Witchcraft, expreſlie forbidden be the Lawis of Almychtie God, and municipall Lawis of this realme. AND CLANGES hir of the haill remanent poyntis of Dittay, and crymes thairin contenit.[3]

SENTENCE. The Juſtice, be the mouth of James M^c^cairtour,[4] dempſter of Court, Ordanit the ſaid Margaret Wallace to be tane to the Caſtell-hill of Ed^r^, and thair to be wirreit[5] at ane ſtaik to the deid; and hir body thaireftir to be brunt in aſches: And all hir moveabill guidis to be eſcheit, &c.

Slaughter.

Mar. 27.—MR JOHNNE STEWART of Dowellie, and Thomas Stewart, his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Johnne Low in Gairnetullie; committit vpone the xviij of Januar, 1614 yeiris.

PERSEWARIS, James Low, as brother; Andro Low, burges of Perthe, neir kynſman; Sir W. Oliphant.
PRELOCUTOURIS in defence, Mr Lucis Stewart, Mr Robert Lermonth.

It is allegit that this matter can nocht pas to ane Aſſyſe, in reſpect thai haif obtenit his Maieſteis Remiſſioun, vnder his hienes Greit Seil, quhilk thay vſe and produce, daitit the xxiiij day of Marche, 1618 yeiris.—The Juſtice ordanis the pannell to find cautioun to ſatisfie the pairties; quha, togidder with James Soutter of the Mylnetoun of Fornocht, band and obleiſt thame, &c.

[1] 'By a plurality of voices,' as it was more recently expressed. [2] Seeking. [3] '*Johnne Lawſoune*, chanceller.' [4] Who appears for the first time in this office. [5] Strangled.

Intercommuning with the MacGregors—Slaughter—Theft—Fire-raising, &c.

Apr. 23.—Johnne Moir M'eane Chere[1] Chamrone (Cameron), and Duncane (Moir) M'eane Chamrone, his brother.

Dilaitit of the crymes following, viz. The ſaid *Johnne Moir*, ffor being in cumpanie with vmq[le] Allaſter M'Gregour of Glenſtra, Johnne Dow M'Gregour, his brother, and vtheris thair kyn and freindis, togidder with the Clan-Chamrone and Clan-Anveroche, and vtheris brokin men and ſoirneris, to the number of ffoure hundreth perſones, convocat in battell array, vpone the landis of *Glenfrune*,[2] pertening to the Laird of Luſe,[3] in ffebruar, 1603 yeiris; quhair vmquhile Alexander Colquhoun of Luſe, accompaneit with certane his freindis, war convenit, at that tyme, be vertew of oure ſouerane lordis Commiſſioun, to reſiſt the ſaidis M'Gregouris cruell interpryſes and intentiones. And for airt and pairt of the ſteilling and away-taking of ſex hundreth ky and oxin, aucht hundreth ſcheip and gait, fourtene ſcoir horſe and meiris, with the haill pleniſſing, guidis and geir of the four-pund-land of Luſe, pertening to the inhabitantis thairof. And ſiclyk, the ſaid *Duncane Moir M'eane Chamrone*, ffor being in companie with Robert Abroche,[4] Johnne Dow M'allaſter,[5] and vtheris thair complices, ane aucht yeir ſyne, or thairby,[6] at the Slauchter of vmq[le] James Menzies, brother to the Barrone of Comerie, and Burning of his hous;[7] and ſa was airt and pairt of the ſaid ſlauchter, and burning of the ſaid hous. To the taikin,[8] he hes confeſſit that he paid thre hundreth merkis to the Barrone of Comerie and his freindis, in Aſſythement[9] of the Slauchter and Burning; as at lenth is contenit in the Dittay.[10]

Perſewar, Sir Williame Oliphant; Johnne Colquhoun, indueller in Leyth, as informer.

The perſones on pannell, being enterit, declairit that nane of the freindis of the Barone of Comerie could perſew thame for the Slauchter of James Menzeis; becaus thai had reſſauit ſatisfactioune for the Slauchter and Burning, fra Duncane. And the ſaid Johnne Moir confeſſit his being at the ffeild of Glenfrune, bot denyis that he did ony ſkayth thairat.

[1] John 'the large,' the son of John of 'the mouse colour.' [2] See this Collection, II. 430, for an account of the Battle of Glenfruin, &c. [3] Luss, on the banks of Loch-Lomond. [4] M'Gregor. Named *Abroche* after his father Duncane, viz, 'of Lochaber.' [5] It appears from the Records of the Privy Council, that he was killed in February, 1611. [6] Robert Abroche received the Royal pardon, previous to December, 1612. [7] As the Menzieses were both interested and most zealously active in furthering the cruel persecutions directed against the Clan-Gregor, so they were particularly obnoxious to the vengeance of that Clan. [8] In testimony or *token* whereof.

[9] That compensation shall thee nought avail,
Which erst necessity, not Justice gave;
Howe'er in others it be held sustainable—
But shall be quoted as sound proof of guilt,
And practical confession of thy crime. *Anon.*

[10] The Dittay is not preserved on record.

The Juſtice Ordanis the Dittay to pas to the knawlege of ane Aſſyſe, &c.

ASSISA.

Johnne Naper of Kilmahew,
Johnne Darleith of that Ilk,
Johnne Danielſtoun of Dalquherne,
Mungo Buchannane in Tilliechevin,
Wm Buntene in Auchinfoule,
George Nicoll, cuik in Edr,
James Mitchell in Chapeltoun,
Johnne Williamſonn, thair,
Williame Gow in Drymmene,
Robert Moriefoun, burges of Dumbartane,
Vmphra Colquhoune, indueller in the Cannogait,
Williame Buchannane, thair,
Adame Clerk, litſter in Edinburgh,
Patrik Colquhoun, alias Cowane, tailzeour in Edinburgh,
George Mitchel, ſtaibler thair.

VERDICT. The Aſſyſe, all in ane voce, ffand, pronuncet, and declairit the ſaidis Johnne and Duncane to be ffylet, culpable, and convict of the crymes *reſpectiue* aboue writtin.—SENTENCE. To be tane to the Caſtell-hill of Edr, and thair, thair heidis to be ſtrukin fra thair bodeyis; and thair guidis to be eſcheit and inbrocht to his Maieſteis vſe, &c.

Suborning of Witnesses—Perjury.

Jun. 22.—ANDRO TRUMBLE in Belſches, Robert Ker in Bewlie, James Zoung in Belſches, and Dauid Trumble in Luſtruthir.

Dilaitit of Suborning of Witneſſes, and for beiring of ffalſe-witneſſing.

My lord Aduocat producet the Dittay, with ane Warrand direct to the Juſtice be the Lordis of Seſſioun, for putting the pannell to the tryell of ane Aſſyſe, for the crymes ſpecifeit in thair Dittay.[1]

ASSISA.

Gilbert Ker of Lochtour, Williame Ker of Lyntoun, Johnne Glendonyng of Drumraſche, George Kincaid, mercheand in Edinburgh, Mr Thomas Ker, ſone to the Guidman of Yair.[2]

My lord Aduocat takis inſtrumentis of the ſueiring of the Aſſyſe; and for verificatioun of the Dittay, producet the Depoſitiones maid in preſens of the Lordis of Seſſioun, ſubſcryuit be my Lord of Melrois,[3] *in preſentia Dominorum*; And alſo, producet ane Decreit of the ſaidis Lordis, vnder the ſubſcriptioun of Mr Thomas Hay, clerk, daitit the xxij of Junij inſtant, ffinding and declairing the ſaid Andro Trumble to be a periured and ffals man, and ane corrupter and ſeducer of Witneſſes to depone ffalſlie; and alſo, ffinding the ſaidis Robert Ker, James Zoung, and Dauid Trumble, Witneſſes foirſaidis, ſeducet be the ſaid Andro, to be in lyk maner perjuret and ffalſe Witneſſes; in reſpect, thay firſt declairit be thair ſolemne aithes, that thai war nawayis ſeducet, be the ſaid Andro Trumble, to beir ffals witnes in his cauſe of Spuilzie, perſewit be him aganis Williame and Walter Mydilmeſtis; and thaireftir, being mair ſtraitlie and narrowlie examinat, confeſſit the verritie of the ſaid ſeductioun, and the ffalſet of thair Depoſitiones. And vpone the productioun thairof, aſkit inſtrumentis, and

[1] The Dittays are so extremely prolix and uninteresting, that it has not been deemed necessary to insert them here. [2] The rest burgesses. [3] Sir Thomas Hammilton of Binning, &c. afterwards Earl of Hadington, Lord President of the College of Justice, &c. one of the greatest men of his time.

proteſtit for Wilfull Errour aganis the ſaidis perſones of Aſſyſe, gif thay acquit; ſpeciallie, in reſpect of the pannellis offering thame in his Maieſteis will for the ſaid crymes.

Verdict. The Aſſyſe, all in ane voce, be the repoirt of Nicoll Edȝer, mercheand burges of Edinburghe, Chanceller, ffand, pronuncet, and declairit the ſaidis Andro, Robert, James and Dauid, to be ffylet, culpable, and convict.—Sentence. The ſaidis *Andro Trumble*, *Robert Ker*, and *James Ȝoung*, to be tane to the Caſtell-hill of Edinburgh, and thair to be Hangit quhill thai be deid; and thair haill moveabill guidis to be eſcheit to his Maieſteis vſe.—And the ſaid *Dauid Trumble* to be tane to the Mercat-croce of Edinburghe, and thair his toung to be pearcet with ane hett boitkyn; and thaireftir Baniſchet this realme, and nocht (thaireftir) to be fund thairintill, vnder the pane of deid.

Assisors *fined for being abſent.*

Sir Williame McDougall of Mccairſtoun, Sir Johnne Scott of Newburgh, Raulf Ker, bailȝie of Lauder, Sir Robert Scott of Thirlſtane, Williame Johnneſtoun of Lockerbie, Williame Borthuik, elder of Johnnſtoun-burne, Sir Archibald Murray of Blakbarrony, Mr Johnne Home of Swanſcheill, James Fairbairne of Weſt Gordoune, Johnne Elphingſtoun of Schank, Alexander Cranſtoun of Morieſtoun, Johnne Cranſtoun of Thornydykis, Sir Robert Scott of Hayneing, Dauid Vauſe of Blauſe, Williame Home of Hardeiſmylne, Williame Bennet, ſeruitour to the Erle of Roxburgh, Johnne Symontoun, younger, of that Ilk, Gilbert Ellote of Stobis, Robert Logane, ffiear of Bonnytoun, Mr Johnne Ker, clerk of Selkirk, Adame Gairdin, mercheand,—and twelve others, mercheands,—'ilk ane of thame, for thair nocht compeirance, to pas vpone the ſaid Aſſyſe, war vnlawit in the pane of ane hundreth merkis.'

Taking captive—Scourging—Slaughter, &c.

Jun. 26.—Sir Williame Keyth of Ludquhairne, kny^t^, and Hew Charteris, his ſervand.

Dilaitit for allegit airt and pairt of the Taking and Apprehending of Alexander Pedder, myller at the mylne of Feachfeild, vnder nycht, furth of his duelling hous, mother-naikit as he was borne; and for cayreing him, as ane captiue and priſſoner, to the Place of Feachfeild, and breking vp of the ȝettis and durris of the ſaid place; ſcurgeing him with ſuord-beltis and horſe-brydillis vp and doun the hall thairof, to the effuſioun of his bluid. And ſiclyk, for allegit airt and pairt of the daith and Slauchter of vmq^le^ Andro Fraſer, ane young infant bairne, ſone to Andro Fraſer, younger of Mukallis: And for contravening the Actis of Parliament, in beiring and weiring of hagbutis and piſtolettis

Persewaris, Andro Fraſer, younger of Mukallis, as father; Alexander Pedder, myller; Sir Williame Oliphant of Newtoun, kny^t^, Aduocat to our ſouerane lord, for his hienes entreis.

Prelocutouris in defence, Mr Thomas Hoip, Mr Roger Mowat.

Compeirit the ſaid Sir Williame and his ſervand, togidder with the ſaid prelocutouris, and exponet and declairit, that thai war informet, Criminall Letteris

war direct out aganis thame, vpone threſcoir dayis wairning, at the inſtance of Andro Fraſer, &c. chargeing thame and certane vtheris[1] to find cautioun for thair perſonall compeirance this day and place, in the hour of caus, to vnderly the law for the above allegit crymes: For obedience of the quhilk charge of Hoirning, and tryell of thair innocencie of the ſaidis allegit crymes, the ſaid Sir Williame Keyth, and Hew Chairteris, compeirit and offerit thame ſelffis of the Law, as altogidder innocent thairof. And in reſpect na pairtie compeiris to inſiſt in thair perſute, being oft tymes callit to that effect, proteſtit for thair cautiouneris relief, and that thai, na nane of thame on nawayis ſould be callit or perſewit for the ſaidis allegit crymes, in ony tyme cuming; and thairupoun aſkit inſtrumentis.

Johnne Forbes, eldeſt ſone and appeirand air to Mr Duncane Forbes of Bannagaſk, as cautioner and ſouertie, for repoirting the above Letteris, deulie execute and indorſate, and perſute thairof, &c., vnlawit vnder the panes following, viz. vpone the ſaid Sir Williame Keyth, and Nathaniell Keyth of Coklaw, ilk ane of thame vnder the pane of v^c merkis; and vpone ilk ane of the remanent defenderis, in the pane of ane hundreth merkis.

House-breaking—Theft.

Jul. 3.—ANDRO RUTHERFURD, ſumtyme ſervand to Mr James McGill of Cranſtoun.

Dilaitit of airt and pairt of the breking of the ſaid Mr James M^cgillis Place of Cranſtoun, and breking vp of ane kiſt,[2] within the Woman-hous[3] thairof, pertening to Malie Newlandis, and ſteilling xxx li. furth thairof; committit in Maij laſt.

The pannell offerit him ſelff in the Kingis Maieſtie and the Laird of Cranſtones will, for the ſaid cryme: Quhairvpone, the Juſtice ordanit him, of his awin conſent, to be Baniſchet the parochin of Cranſtoune; and at na tyme heirefter to be fund thairintill, vnder the pane of deid. And ordanit him to find cautioun for his compeirance vpone fyftene dayis wairning, to vnderly the law for the ſaid cryme, gif in ony tyme cuming he beis fund within the ſaid parochin; quha fund Thomas Rutherfurd in Borthiuk-manes cautioun for that effect.

Fire-raising—Slaughter.

Jul. 24.—DONALD M^cANGUS of Glengarie.

[1] There were 'Nathaniell Keyth of Coklaw, Williame Keyth, ſone to Alex. Keyth of Bodome, Robert Marſchell, Gilbert Wairdene, Gilbert Hucheoun, and Alexander Forbes, all ſeruitouris to the ſaid Sir Williame; Johnne Keyth, ſone to Alex. Keyth, vncle to the ſaid Sir Williame, George Keyth, callit *Caithnes*, George Johnne Dow M^cfarlane, Alexander Fordyce, and Thomas Murray, ſeruitouris to the ſaid Nathaniell Keyth, vncle to the ſaid Sir Williame.' [2] Chest. [3] Probably that part of the Offices of Cranstoun, where the female domestics resided.

Dilaitit of th treſſonable Raiſing of ffyre, Burning of xxvij Houſſes, with the inſicht being thairin, pertening to Mr Johnne M^c^Kenȝie, Archedeane of Roſs; and Slauchter of dyuerſe his tennentis.

Persewar, Mr Johnne M^c^Kenȝie, Archedene of Roſs.

The perſewar paſſis fra the pannellis perſute *pro loco et tempore*, for the crymes contenit in the Letteris.

The pannell offeris him ſelff to the tryell of the law for the ſaidis crymes, as altogidder innocent; and diſaſſentis to the ſaid continuatioun. And for obedience of the Juſtice ordinance, ffand Sir Donald Gorme of Slait, kny^t^, perſonallie preſent, cautione for his entrie, to the effect foirſaid.

Resetting of a Jesuit-Priest.

Aug. 6.—Andro Hathowie, burges of Gleſgow, and Jonet Pollok, his ſpous.

Dilaitit of the treſſonabill Recept of George Mortimer, ane Jeſuite Preiſt, &c.[1]

Verdict. The Aſſyſe, be pluralitie of voittis, be the repoirt and declaratioun of George Moore of Powmadie, chanceller, ffand the ſaidis Andro and Jonet to be ffylet, culpable, and convict, &c.—Sentence. The Juſtice, conforme to ane Warrand of the Lordis of his Maieſteis Secreit Counſall, decernis and ordanis the ſaidis *Andro* and *Jonet* to be Baniſchet furth of this kingdome of Scotland, during all the dayis of thair lyftymes: And to be committit to waird, thairin to remane, quhill cautioun be fund to the Proveiſt and Bailleis of Gleſgow, for obedience of the ſaid dome, and thair nocht returning agane; vnder ſic panes, as ſall be ſet doun be the ſaidis Proveiſt and Bailleis, in thair Act to be maid thairupoun.

[*Mr Robert Fairlie, Juſtice-Depute.*]

Theft.

Sep. 20.—Henrie Kynloche, ſumtyme poſt-maiſter, indueller in the Cannogait.

Dilaitit of the thiftious ſteilling of ane blak cloik, lynet throw with blak veluet, ane grograne taffitie cloik, lynet with figuret ſatene, and tua pair ſilk ſchankis, pertening to Alexander Lord of Kildrymmie, furth of his Place, at the bak of the Palice of Halyruidhous; committit in November 1621 laſtbypaſt.

The pannell confeſſis the cryme ſpecifeit in his Dittay, with all humilitie: Seing the guidis ſtowin ar reſtorit to the rychteous owner thairof, offeris him ſelff in the Kingis Maieſtie and his hienes Counſellis will, for the ſaid cryme.

Warrand *of the Lordis of Secreit Counſall.*

Apud Halyrudhous, *decimo quinto menſis Maij*, 1622. Forsamekill as Henrie Kinloche, ſumtyme poſt-maiſter in the Cannogait, being tane and put in waird, within the Tolbuthe of the Canno-

[1] The Dittay, which is recorded at length, is similar to those already reported.

gait, quhairin he prefentlie remanis, ffor certane poyntis of Thift committit be him: Off the quhilkis, neceffar it is that he be tryed, and that fome pwneifchment be inflictit vpone him, to the terrour of vtheris to offend in the lyk heireftir. Thairfoir, the Lordis of Secreit Counfall Ordanis his Maiefteis Juftice, Juftice-clark, and thair deputis, to appoint ane Juftice Court to be haldin in the Tolbuthe of Edinburghe, at fuche ane day as thay fall think expedient; and to caus the faid Henrie to be exhibeit and producet befoir thame; and thair to accufe him of the faid cryme of Thift, accoirding to the perticuler Dittay, that fall be gevin in aganis him. And Ordanis his Maiefteis Aduocat to infift in the perfute of him; and gif the faid Henrie fall confes the faid cryme, and become in his Maiefteis will for the fame, that than thay pronunce dome and fentence aganis him, ordaning him to be Banift the realmes of Scotland and Ingland, and nevir to returne agane within the famyn during his lyftyme, vnder the pane of deid. Extractum, &c. JACOBUS PRYMROIS.

SENTENCE was pronounced in conformity to this Warrant.

'Rapt and Ravishing'—(Forcible Abduction)—Adultery.

[THE following brief notice of an ancient *Crim. con.* Case, affords a specimen of the mode in which affairs of gallantry were managed in the Western Islands and Highlands of Scotland. Sir LAUCHLAN M^c^FINGANE (MACKINNON) of Strathardill, having fallen in fancy with *Mary M^c^Connell (MacDonald)*, the wife of *Ranald of Benbecula*, makes the best use of his winning arts, and carries off the lady, by violence, from her husband. It would appear, from the charge of Adultery being also preferred against this knight errant, that the consent of the lady had in all probability been previously obtained to the arrangement. *Ranald M^c^Allan V^c^Ean*, the injured husband, was brother to *Donald M^c^Allan M^c^Ean*, CAPTAIN OF CLANRANALD, and grandfather of *Donald MacDonald of Benbecula*, who became Captain of Clanranald, anno 1725. This gay and *captivating* deceiver, Sir Lauchlan, was one of several Hebridian Chiefs, who had been knighted by KING JAMES VI, in the latter part of his reign, to ensure their more ready acquiescence in the schemes so zealously projected by him, for the civilization of their semi-barbarous tribes. A Gift of his Escheat was granted by the King, Dec. 12, 1622.[1]

The Editor begs to refer the reader to the forthcoming work of Mr GREGORY, already alluded to, for more copious illustrations of matters connected with the Hebrides and West Highlands.]

Nov. 8.—SIR LAUCHLANE M^c^FINGANE of Strathardill, kny^t^.

Dilaitit of the Rapt and Raveifcheing of Marie M^c^conneill, fifter to Sir Donald M^c^conneill of Slait, and fpoufe to Rannald M^c^allane V^c^eane of Caftelwirrie;[2] committing Adulterie with hir, and remanent crymes contenit in the Letteris.

James Logie, wryter, producet the Letteris deulie execute, indorfate, and regiftrat; quhairby the faid Sir Lauchlane is denuncet rebell, and put to the horne, for nocht finding of cautioun, to haif compeirit to haif vnderlyne the law.

Slaughter.

Mar. 12, 1623.—WILLIAME OLIPHANT of Gafk, and Alexander Flemyng of Monnefs.[3]

Dilaitit of airt and pairt of the Slauchter of vmquhile Dauid Tofcheoch of Monyvaird.[4]

[1] See Record of the *Privy Seal* and *History of the Macdonalds.* [2] Castletirrim. [3] Peter Oliphant of Rescobie, and Johnne Erle of Wigtoun, cautioners for the pannels' entry. [4] See Jul. 29, 1618, &c.

Compeirit Mr James Campbell, ſone to the Laird of Laweris, for him ſelff, and in name and behalf of the remanent kyn and freindis[1] of the ſaid vmq^le Dauid, and in name of Annas Grahame, Lady Monyvaird, and paſt fra the ſaid Williame Oliphant of Gaſk his perſute, *pro loco et tempore.*

Compeirit perſonallie, Mr Johnne Oliphant, as procuratour for Williame Oliphant of Gaſk, and producet ane Warrand and delyuerance of the Lordis of Secreit Counſall, commanding the Juſtice to deſert the dyet appointit this day for the ſaid Williame Oliphant; quhairof the tennour followis.

Warrand *of the Secret Counſell, concerning Williame Oliphant of Gaſk, for Monyvairdis Slauchter.*

My Lordis of Secreit Counsall, vnto ȝour ll.[2] humble meanis and ſchawis, I, ȝour ſeruitour, *Williame Oliphant of Gaſk:* That quhair, I am charget to compeir befoir his Maieſteis Juſtice, in the Tolbuth of Edinburghe, vpone þe xij day of Marche inſtant, to vnderly the Law for the Slauchter of vmq^le *Dauid Toſcheoche of Monyvaird*, and vtheris crymes ſpecifeit in the Letteris raiſed thairupoun. Lyk as, þe Juſtice intendis to proceid aganis me in that matter, albeit it be of verritie that his Maiestie, being treulie informet of the forme and maner how that vnhappie Slauchter fell out, and how that dyuerſe come to þe ffray quho war bothe ignorant and innocent of the Slauchter, and wald haif bene lothe to haif bene actoris thairin, or to haif medlit thairwith; his Maiestie was þairupoun graciouſlie pleiſit, by his Letteris writtin and direct to ȝour Lo., to recommend to ȝour Lo. the ſettling of that ffeid[3] by ſome amicabill and freindlie dreſſe, and by making of ſuche Affythement[4] and ſatisfactioun, as convenientlie may be performed: And in the meane tyme, it was his Maieſteis expres will, and ſpeciall command, and directionn vnto ȝour ll., that all proces Criminall and Ciuill aganis me, for that caus, ſould reſt and ceis, till ſome generall courſe war concludit vpone and tane in that matter: As his Maieſteis Letter, exhibeit vnto ȝour ll. in the ſex hundreth and nyntene ȝeir of God beiris. Accoirding quhairvnto, ȝour Lo. hes nocht onlie gevin Warrand to deſert ſindrie dyettis, quhilkis formerlie war appointit for my tryell in this matter, bot with that ȝour ll. tooke verrie grit panes, in tua or thre ſeuerall dyetis, to haif ſetled this ffeid, and cauſed wairne ane grit number of *Monyvairdis* ſpeciall freindis to that effect: And at þir dyettis ȝour ll. cauſit ſatisfactioun to be maid to *Duncane Campbell* and *Dauid Malloche*, who war bothe deidlie hurte and woundit at the ſlauchter of *Monyvaird*, the on haiveing his hand cut aff, and þe vther being deidlie woundit in the heid; bot anent þe ſatisfactioun for *Monyvairdis* Slauchter, whairin thair was verrie honorable Offeris maid; the ſame was caſſin af, be reſone of *Young Monyvairdis* minoritie, his ffreindis in the mean tyme refuſing to medle þairin, or to tak burding for him; ſua that þe nocht ſetling of this buſſines proceidis nocht frome the default or vnwillingnes of the offenderis, quho in heart and affectioun wold do mair nor goodlie thay may in þat matter, bot frome the refuiſall of *Monyvairdis* freindis to deale thairin, during his minoritie. In conſideratioun quhairof, I man[5] maiſt humlie beſeik ȝour ll. to geve command to þe Juſtice, Juſtice clerk, and þair deputtis to deſert þe ſaid dyet, and to deſiſt and ceiſe fra all proceding aganis me or my cautioneris þairintill; diſchargeing thame þairof, and of þair offices in that pairt, till ſome generall courſe be takin for þe finall ſettling of that ffead. And ȝour ll. anſuer. (ffollowis þe delyuerance on the bak þairof.)

Apud Edinburghe, *xj Marcij*, 1623. Fiat *ut petitur*,

Geo. Cancell^r. Mar. Moirtoun. Wigtoun. Roxburgh. Melrois.
Lauderdaill. R. Cokburne. All. Hammiltoun. J. Prymrois.

The Juſtice, for obedience of the ſaid Warrand, and command thairin, Ordanit

[1] Blood-relations. [2] Lordships. [3] Feud. [4] Compensation or *solatium* paid to the deceased's nearest of kin, on account of being deprived of their relation. [5] Must.

the ſaid dyet to DESERT aganis the ſaid *Williame Oliphant:* AND of conſent of the ſaid Mr James Campbell, continewis the dyet aganis *Alexander Flemyng of Monneſs*, to ane fyftene dayis wairning; and cautioun to be fund be him for his entrie to that effect.

Johnne Erle of Wigtoun of new becomes cautioun for the ſaid Alexander, to enter him befoir his Maieſteis Juſtice or his deputis, the thrid day of the nixt Juſtice-air of the ſcherefdome quhair he duellis, (Perthe,) or ſoner, vpone xv dayis wairning, &c.

Slaughter.

Jun. 4.—THOMAS GOWDIE, mercheand, burges of Dumfreis.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Harbert M^c^kie, younger, in Dumfreis; committit vpone the laſt day of December laſtbypaſt; be geving to the ſaid vmq^le^ Harbert M^c^kie, at the Brig-end of Dumfreis, of ane grit and deidlie ſtraik, with his fute, in the ſaid vmq^le^ Harbert his ſecreit pairtis; ane vther, at the left pape, vpone the heart; and ane thrid, on his left ſchoulder, quhairby his ſchoulder-bayne was ſtrukin out of joynt: Off the quhilkis ſtraikis he nevir convaleſſet, bot being inſtantlie borne hame to his hous, tuik bed; quhairin he lay bedfaſt, in grit dollour and payne, of the ſaidis hurtis, vnder the cure of chirurganes, be the ſpace of tuentie dayis thaireftir; and, in end, vpone the xxvj of Januar thaireftir, now bypaſt, he deceiſſit of the ſaidis hurtis and woundis.

PERSEWARIS.	PRELOCUTOUR	PRELOCUTOURIS
Katharene Edȝer, relict;	for the perſewaris.	in defence.
Agnes Maxwall, mother;	Johnne Maxwall of	Mr Lueis Stewart,
Eduard and Johnne M^c^kie, his tua brether.	Conhaithe.	Mr Thomas Nicolſoun, younger, Advocattis.

The pannell, eftir reiding of the Dittay, to informe the Juſtice of the ſecreit proceidingis of thir perſewaris, and how maliciouſlie thai proceid aganis him, declairis, that thair was nevir querrell nor diſcoird betuix him and vmq^le^ Harbert M^c^kie, for quhais ſlauchter he is wranguſlie and injuſtlie perſewit; bot as the treuth is, ane contraverſie falling out betuix ane Thomas Craik and the pannell, in craveing of ane ſowme of money addetit be Craik to him, and ſum woirdis and dry cuffis[1] being gevin be ather of thame to vther, the Bailȝie of the Regalitie of Lyncluden, viz. Johnne Maxwall, brother to Kirkconnell, within quhais Regalitie the contraverſie fell out, for putting the pairteis to quyetnes, commandit thame to waird, quhill cautioun war fund for keiping his Maieſteis peace; quhairvpone, the ſaid vmq^le^ Harbert M^c^kie, with ane number that aſſiſtit him, laid handis vpone the pannell, brocht him, with grit violence, to the Waird-

[1] Dry blows, *i.e.* upon which no blood had followed; fisty-cuffs.

hous, pat him in the ſtokis; and becaus the buittis that was than vpone his legis wald nocht, convenientlie, be ſtowit and placet within the hoillis of the ſtokis, thai maiſt inſolentlie ſtrak him vpone his bak, dung doun the over[1] bar of the ſtokis, and dancet thairupoun with thair feit and kneyis, as alſo vpone his breiſt and bellie, quhairthrow he was almoſt confoundit in that painful agony. And quhair, in the Dittay, it is allegit, that thair wes ſtraikis gevin to the ſaid vmq^le^ Harbert, quhairof he deceiſſit; the verritie thairof is, that ane yeir or thairby, of befoir, he being ſtrukin in at the left pape be ane Ahannay, with ane durk, a ſevin inches or thairby, with grit difficultie was than curet, bot never fullilie convaleſſit; ſua that the corruptioun[2] gaddering within the wound, raiſit vpone him ane new fever, quhairof he deceiſſit; as is ſufficientlie knawin to the haill countrey. Lyk as, it was declairit be the ſaid vmq^le^ Harbert to dyuerſe inhabitantis of the ſaid burgh of Dumfreis, that, lang befoir that contraverſie of the pannellis, he was ſtrukin in the ſecreit pairtis, quhilk he ever declairit would be his deid. And ſa, the premiſſes being conſidderit, the ſaid perſute is maiſt wranguſlie inventit, and vpone greid of geir to be obtenit of this pannell be thir ſchameles perſewaris; and, vnder cullour of juſtice, thay haif followit furth this perſute aganis him, albeit the defunct him ſelf, in preſens of his chirurgane and vtheris, cleirlie abſoluit and fred the pannell of all perſute done to him.—Quhilk being premittit,[3] for informatioun, it is allegit be the pannell and his prelocutouris, that this Dittay can nocht pas to ane Aſſyſe, becaus the ſaid vmq^le^ Harbert M^c^kie, the perſone allegit ſlane, the tyme lybellit of his ſlauchter, was rebell and at his Maieſteis horne, for ane criminall cauſe, viz. ffor nocht compeirance befoir his Maieſteis Commiſſioneris within the Tolbuthe of Jedburgh, vpone the tuentie ſevint day of Apryle, I^m^.Vj^c^. and nyntene yeiris, in ane Juſtice court, haldin be thame the ſaidis day and place, to haif vnderlyne the law for beiring and weiring of hagbuttis and piſtolettis, and contravening the Actis of Parliament maid thairanent. And for verificatioun thairof, producet the Letteris of Hoirning, &c.

Continued to the thrid day of the nixt Juſtice-air of Dumfreis, &c.—The ſaid Thomas Goudie, defender, be his aithe gevin, declairit that he dred[4] bodelie harme of the ſaid Eduard M^c^kie, ane of his perſewaris; and thairfoir deſyret cautioun and lauborreis of him, conforme to the ordour, vnder ſic pane as his lordſchip ſould pleis modifie. Johnne Maxwall of Conhaithe become ſouertie, &c., vnder the pane of ffyve hundreth merkis money, *toties quoties*.

Slaughter of two MacFarlanes—Barbarous Torture and savage Murder of a Buchanan by some of the Clan MacFarlane.

[In the whole range of the Criminal Records of this country, remarkable though they unquestion-

[1] Upper. [2] Purulent or corrupted matter. [3] Premised. [4] Dreaded.

ably are, the Editor believes it would be difficult to point out a Case possessing incidents of such varied and frightful interest, as those brought forward, so prominently, in the following Trial. It is not his intention, in this place, to recapitulate the leading facts of the present truly horrible Case. He has not been able to throw much additional light upon the facts recorded in the Books of Adjournal from contemporary documents. All that he at present deems worthy of remark is, that *tradition* has preserved pretty accurate outlines of the general features of this 'Romance of real life' in the district where they occurred—an additional proof, were such requisite, of the fidelity with which historical and extraordinary events are handed down, from father to son, in THE HIGHLANDS OF SCOTLAND.

The only Paper which the Editor has discovered, illustrative of the other side of the question, is the 'SUPPLICATION,' preserved among the Warrants of PRIVY COUNCIL, which is appended to this Trial. That document is given here as an act of common fairness to the CLAN MACFARLANE. The reader is left to draw his own conclusions as to the relative demerits and guilt of the several parties.]

Jun. 6.—GEORGE BUCHANANE, in Gartincaber; Johnne B., his ſone; Patrik B., ſone to George B. of Archinar (Auchmar); Patrik M^c^wreiſt, his ſervand; Johnne Beg Buchannane, in Ballindewar; Johnne B., his ſone; Johnne Keir, in Gartnahinch;[1] Thomas Buchannane, in Drongie; and Archibald B., his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^le^ Duncane M^c^farlane, ſone to Andro Moir M^c^farlane, in Voneſſene; committit vpone the ſaxt day of Apryle laſt, within the toun of Kippienoche, in Drummond, in the Lennox.

PERSEWARIS.	PRELOCUTOURIS for the perſewaris.	PRELOCUTOURIS for the pannell.
Robert and Thomas M^c^farlane, as brether;	The Young Laird of M^c^farlane;	Alexander Douglas of Maynes;
Sir Williame Oliphant, kny^t^.	Mr Dauid Prymrois.	Mr Robert Nairne.

Compeirit the ſaid Robert M^c^farlane, &c., and producet the criminal letteris, deulie execute and indorſate, vpone the haill perſones defenderis aboue writtin; and offerit thame ſelffis reddie to perſew the defenderis for the ſaid cryme, and deſyret proces.

The ſaid Alexander Douglas of Maynes, cautioner for the entrie of the haill defenderis, with Mr Robert Nairne, Aduocat, producet ane WARRAND and command to the Juſtice, proceiding vpone the following

SUPPLICATIOUN, *gevin into the Lordis of Secreit Counſall, be the foirſaidis haill defenderis, and in thair names.*

MY LORDIS OF SECREIT COUNSALL, vnto ȝour Lo. humlie meanis and ſchawis WE, ȝour ſeruitouris, PATRIK BUCHANNANE, appeirand of Auchmar; George Buchannane, in Gartincabir; Johnne Buchannane, his ſone; Johnne Buchannane, in Ballindorne; Johnne Buchannane, his ſone; Thomas Buchannane, ſone to vmq^le^ Williame Buchannane, in Blairneborg; Archibald Buchannane, his broþer; Donald Keir, in Gartnahinche; and . . . . . M^c^caula, ſerui-

[1] Perhaps for Gartranich, or Gartrahnich.

tour to the ſaid Patrik Buchannane: That quhair, the ſaxt day of Junij inſtant is appointit vnto ws for our compeirance befoir the Juſtice or his deputtis, in the Tolbuth of Edinr, to vnderly the law for the Slauchter of vmqle Duncane Mcfarlane, ſone to vmqle Andro Moir Mcfarlane, in Kipnoche: Lyk as, the Juſtice intendis to proceid aganis ws in the ſaid matter, althoght it be of verritie, that gif ȝour ll. war informed of þe certane treuth of this buſſines, how and vpone quhat grund and occaſioun the Slauchter fell out, and quhat juſt caus of wraith and diſpleaſour was gevin to vs thairin, we perſuaid our ſelffis that ȝour lo., in honnour and juſtice, wald nocht think this perſute to mereit ony fauour: For the treuth is, that þe ſaid vmqle *Andro Moir Mcfarlane*, quho, during the whole courſe of his vnhappie lyfe, was knowin to be ane notorious theif and lymmer, haiſing ſtowin ſum goodis frome certane of his Maieſteis guid ſubiectis in the Lennox, ſome foure or fyve ȝeiris ſince, or þairby; and þe ſaid vmqle *Williame Buchannane*, out of his trew haitrent and deteſtatioun of ſuche theviſche doingis, haiſing maid ſome inquierie, and having tane panes and travell to ſpeir out and try the goodis, in end, he tryed the goodis to be ſtowin be the ſaid vmqle *Andro Moir Mcfarlane*, who, by courſe of Juſtice, was conſtraned to mak redres and ſatisfactioune for the ſame: And the ſaid vmqle *Andro*, haiſing conſauet ane deidlie haitrent and malice aganis þe ſaid vmqle *Williame* for ſpeiring[1] of thir goodis, he reſolued, out of the pryde and malice of his wikked heart, to be revenged vpone him, eftir þe moſt deteſtable and crewall maner that the heart of him could devyſe: And knowing that the Gentilman was accuſtomed at ſome tymes, for his recreatioune and paſtyme, to go to þe hunting, in þe Mure aboue the Ducher, he maid choſe and took hold of that occaſioun to do his turne; and haueing, be ſome previe moyane, bene maid acquentit with þe Gentilmannis dyet for his paſtyme, he, accumpaneit with his tuo ſones, and ſewin or aucht vtheris lawles lymmaris,[2] come to the ſaid Mure, and lay at awaît for the Gentilman; and howſone he come þair, about aucht of þe cloke in þe moirning, without ony company bot foure hunting doggis, thay layed handis vpone him and band him faſt, that he mycht not ſteir; and haiſing conſultit amang thame ſelfis, eftir quhat forme and maner thay ſould diſpatche him, thay reſolued, in end, that his preſumptioune and malapeartnes to ſpeir out þe ſaidis goodis deſerued ane extraordiner deathe, by torture; quhilk thay maid him to vnderly, the ſpace of ten houris, in maner following, to wit: Thay band him faſt to ane trie, at the ſaid hour of aucht in the moirning; and everie hour thaireftir, till ſax at nicht, quhilk maid vp ten houris, thay gaif him thre crewall ſtraikis with ane durk, in ſuche pairtis of his body as war nocht to bring preſent daithe; and haiſing this way maggillit him with threttie ſtraikis, till þe full number of

[1] Enquiring; searching after. [2] Thieves; worthless characters.

ten houris war outrwn, thay than gaif him þe laſt deidlie ſtraik, at the heart; quhairwith he fell deid to the ground! And haiſing tirred[1] him naiked, becaus his towng was the inſtrument quhairby, as thay alleged, he offendit, in ſpeiring out of þe former ſtowin goodis, thay cuttit his throte, tooke his toung out of his heid, ſlew his foure dogis, cuttit ane of thair toungis out, and pat it in the Gentilman his mouthe; and pat his toung in the dogis mouthe: And nocht content heirwith, bot the forther to ſatisfie þair inhuman and barbarous crewaltie vpone the naked corpis, thay ſlitt vp his bellie, tooke out his whole intrallis, and pat thame in ane of the dogis belleis, eftir thay had opnit the dogis bellie and tane out his intrallis, quhilkis thay pat in þe Gentilmannis bellie: And ſo left him lyand naked, and the foure deid dogis aboue him; quhair he lay aboue the eard the ſpace of aucht dayis thaireftir, or[2] he was found: FOR the quhilk deteſtabill boutcherie and Murthour, thir lymmeris being callit to thair tryell, befoir his Maieſteis Juſtice, thay tuik the cryme vpone thame, and paſt to the horne; quhairat the ſaid *Andro* remainit till þe hour of his deathe, and the reſt of his complices remanis þairat as ȝit: Aganis quhome ȝour Lo. paſt ane ampill Commiſſioun, for þe perſute of thame with ffyre and ſuord. AND quhair as, this deteſtable and moir than barbarous Murthour ſould haif bred, in the heart and conſcience of thois lymmeris, ſome remorſe and fealling of this ſyn, and ane abſtinance and forbearance frome all forder impietie, ȝit þe ſaid *Andro* continewit in his accuſtomet thevifche trade of Thift, Reaffe, and Oppreſſioun, and could nevir be reclamed þairfra, till the hour of his deathe: AND, for his laſt Thift, he, a littill befoir his deathe, ſtaw an ox fra me, the ſaid *George Buchannane*, and cayreid the ſamyn to ane Houſe in . . . . . .,[3] quhair he and his wyfe hes thair ordiner reſſett; and how-ſone we vnderſtuid of the ſteilling of the ox, we followed the tred[4] directlie toward the ſaid houſe; and haiſing ſend for *the Erle of Pearth*[5] his Officer, to aſſiſt ws in rypeing[6] of the Houſſes þairabout, the lymmar and his ſaid ſone, being in the Houſe foirſaid, and þair guiltie conſcience ſtanding vp aganis thame, as ane burreaw[7] to tak vengence of thame, thay diſguiſet þame ſelffis in weamenis apparell, and preiſt[8] to flie away; whilk being perſaued be ws, and we thinking that thay keipit nocht þe ordiner paiſe of wemen, and ȝitt nawayis ſuſpecting that thay war the lymmaris, we followit, in a ſoft pace, to remark quhat courſe thay held; and the ſaid *Duncane M^cfarlane*, luiking over his ſchoulder, and ſeing ws follow, he turnes about, and preſentit ane lang hagbute at ws; quhilk being fyred, by the Prouidence of God, miſgaue: And with that, he and his father drew þair ſuordis, and come dryveand

[1] Violently stripped, by tearing off the clothes. [2] Ere; before. [3] Left blank. [4] Tread; foot-marks—probably by means of the *sleuth-hound*, or blood-hound. [5] As Lord of the Regality, whose Bailie would, upon application, grant warrant to search, &c. [6] Searching. [7] Fr. *bourreau*, a hangman; an executioner. [8] *Pressed;* made every effort.

vpone ws with all þair force; and or evir we preiſt to perſew thame, thay gaif me, the ſaid *George*, ane deidlie ſtraik, whairat thay ſtrak me deid[1] to the grund, and in the opinioun of the reſt of my companie I was a deid man; and thay hurt and woundit vther thre of ws: And ſua, we finding no longer tyme, with ſuretie, to be beholdaris and ſufferaris, we tuik ws to our juſt and lauchfull defence, quhairin the vnhappie lymmer was worthielie ſlane, and his ſone, who vnhappielie was in companie with him, and who maid the firſt onſet with his hacquebut or euir we knew quhat he was, was lykwayis killed; the fader being rebell and at the horne for þe Murthour foirſaid, and he and his quhole bairnis being þe moſt notorious lymmeris of that Clan. And howeuir it may be obiectit, for þe pairt of þe young man, that he was nocht acceſſour to þe Murthour foirſaid, and that he ſould uocht be pwneiſt for his fatheris deid, it is of treuth that continewallie ſen þe fader was rebell for the Murthour foirſaid, the ſaid Duncane, his ſone, remanit and attendit vpone him, was airt and pairt with him in all his theviſche and wicked deidis; and in affiſting and taking pairt with his fader aganis ws, in our juſt and lauchfull defence, was ſlane: At quhoſe lyke-walk, that nycht, the ox foirſaid, ſtowin be þe fader and þe ſone, was ſlane and eittin.

This being the trew and ſimple diſcourſe of all that hes paſt in this buſſines, We humblie preſent the ſamyn to ȝour Lo. conſideratioun, quhairby ȝour Lo. may perſaue how miſchantlie[2] and barbaruſlie the innocent and hermeles Gentilman was murdreiſt and ſlane, and quhilk was þe ground and occaſioun of the ſucceiding ſlauchteris; quhairin, becaus þair is grit appeirance of diſorder to arryſe, to the diſturbance and brek of þe peace of þe countrey, ſeing the Clan-Farlane gois about þair privat revenge, and our freindis [the Buchanans] on þe vþer pairt, will be cairfull of þair awin defence: We will humlie beſeik ȝour Lo. to tak ſuche courſe and ordour heiranent, as ȝour Lo. ſall think fitteſt for the peace of þe Countrey; and we, for our pairtis, will be willing to vnderly quhateuir ȝour Lo., in honnour and juſtice, ſall preſcryve to ws. And becaus this can nocht be done vpone the ſuddane, bot will requyre ſome tyme and laſour to be tane ordour with and ſatled; We moſt humlie beſeik ȝour Lordſchipis to geve command to þe Juſtice, Juſtice-Clerk, and þair deputis, to desert þe ſaid dyet, and to deſiſt and ceis fra all proceiding aganis ws thairin, or calling of our cautioneris for our entrie; diſchargeing thame þairof, and of þair offices in that pairt: Quhairanent þir preſentis ſall be þair Warrand.

And ȝour Lordſchipis humlie I beſeik.

Ordinance *of the Lordis of Secreit Counſall, on the above Supplication.*

Apud *Halyrudhous, quinto Junij,* 1623. The Lordis Ordanis and commandis the Juſtice, Juſtice Clerk, and þair deputis, to continew the dyet within writtin to þe xiiij day of Junij inſtant:

[1] Insensible; in a dead swoon. [2] Old Fr. *meschantement,* wickedly.

And Ordanis thir complineris to mak OFFERIS to the pairtie, and to prefent the Offeris to þe ȝOUNG LAIRD of M^cFARLANE, yf he he in the toun, and to þe fpeciall freindis attending this dyet, quhome the faidis Lordis Ordanis to remane in this toun of Edinburghe till fome ordour be tane for fatling of the matter within writtin, and for the peace and quyetnes of þe Countrey. And Ordanis the Juftice to difpens with the perfonall compeirance of þe pairtie, vpone new cautioun, conforme to þe ordour.

GEO. CANCELL^E, I. P. D.

And thairwith alfo producet OFFERIS, in writt, conforme to the Ordinance aboue writtin; quhilk was prefentit be *the Young Laird of Buchannane* to the Juftice, to be delyuerit to *the Young Laird of McFarlane*, alfo perfonallie prefent.

THE JUSTICE, for obedience of the Counfallis ordinance, Continewis the dyet to the xiiij *inftantis:* And Ordanit the perfewaris to confidder vpone the Offeris in the meane tyme: And ficlyk Ordanis cautioun to be fund for the haill defenderis re-entrie that day, vnder the panes contenit in the Actis of Parliament.

Mr Dauid Prymrois proteftit, that this Warrand, and Offeris prefentit this day, nawayis prejudge the perfewaris of thair lauchfull perfute, for the flauchter of thair freind and kinfman.

The Laird of Maynes become cautioun for re-entrie of the haill defenderis, contanit in the Letteris, the day foirfaid, &c.

Jun. 14.—COMPEIRIT perfonallie, THE LAIRD OF M^cFARLANE, ELDER, as CHEIFF to the perfewaris, and defyret proces on the ane pairt; and on the vther pairt, Compeirit Alexander Douglas of Maynes, as cautioner for the defenderis entrie this day, and producet,

WARRAND *of the Lordis of Secreit Counfall, &c.*

MY Lordis of Secreit Counfell, vnto ȝour Lordfchipis humlie meanis[2] and fchawis I, ȝour feruitour, George Buchannane, appeirand of that Ilk: That quhair, for obedience of ȝour Lordfchipis ordinance, I, in name of my freindis quho war callit for the flauchter of vmq^le Duncane McFarlane, haif maid Offeris to the pairtie; quhairin I haif offerit, that thay, or I, in þair names, fall fubmit thame felffis to þe ERLES of MAR, MENTEITH, WIGTOUN, and LINLITHGOW: As þe coppie of my Offeris, heirwith producet, beiris. Whairanent, as ȝitt, thay haif returnet no anfuer; fua that it appeiris my Offeris ar reiectit. And gif ȝour Lordfchipis fall nocht find thir Offeris to be fufficient, I, in þair names, offeris to caus thame fubmit all thair differences to ȝour lordfchipis, and to do thairin as ȝour lordfchipis fall think meitt. Heirfoir, I befeik ȝour ll. to confidder of thir Offeris, and to do thairin as ȝour ll. fall think meit for þe peace of þe cuntrey. And becaus the matter can nocht be prefentlie fettled and put to ane poynt, that ȝour lps. will geve a new Warrand to the Juftice, Juftice-clerk, and þair deputis, to continew þe dyet appointit to my freindis for þair tryell befoir thame, vnto fuche reffonabill day as ȝour llps. pleiffis. And ȝour llps. anfuer.

APUD Halyrudhous, *duodecimo Junij*, 1623. THE LORDIS OF SECREIT COUNSALL Ordanis and Commandis the Juftice, Juftice-clerk, and þair deputis, to proceid and minifter juftice in þe matter within written, aganis Johnne Buchannane, fone to *Johnne Beg*, and *Archibald Buchannane*, fone to vmq^le *Williame Dow*. And to Defert þe dyet for þe remanent perfones charget to compeir to vnderly þe Law for þe Slauchter within writtin: Quhairanent þir prefentis fall be vnto þe faid Juftice, Juftice-clerk, and þair deputis, a fufficient Warrand.

GEO. CANCELL.

[1] In presentia dominorum (Secreti Consilij.)

[2] Complains; literally, *moans*, or bemoans.

The Juſtice Ordanis the Dyet to Desert vpone the haill defenderis inſert in the Letteris, except as above; and juſtice to be proſecute and followit furth aganis thame, conforme to the ordour. And Ordanit the ſaid Alexander Douglas, as cautioner foirſaid, to be vnlawit for nocht entrie of the ſaidis Johnne and Archibald Buchannanes, in the pane of ane hundreth merkis for ather of thame. And ſiclyke, that the ſaidis Johnne and Archibald ſall be denuncet our ſouerane lordis rebellis, and put to the horne; and all thair moveable guidis to be eſcheit, &c.

APPENDIX to the preceding Trial.

Supplication *by the Kin and Friends of vmq^le Duncane M^ac Farlane to* the Lords of Privy Council.[1]

My Lordis of Secreit Counsell, vnto yor lo^ps humelie menis and ſchawis we, yor ſeruitouris, the kin and freindis[2] of vmquhile Duncane McFarlane, ſone to vmquhile *Andro McFarlane*, in Kipnoche: That quhair, the ſaid vmquhile *Duncane*, a young boy of the aige of xvj yeiris, or thairby, being moſt ſhamefullie and cruellie ſlayne be certane of the name of Buquhannane, vpone ſett purpois, prouiſioun, and foirthocht fellouny; we, foirbeareing to atoue priuie revenge, and in moſt ſubmiſſiue obedience to his Maiestie and his Lawis, haueing reſolued, be the ordinar courſe of iuſtice, to follow out the tryall of that ſlauchter; we, for this effect, raiſed Letteris, and charged the Criminallis to thair tryall befoir his Maiesteis Juſtice, vpoun the ſaxt of this inſtant: At the quhilk day, we, lookeing that the courſe of iuſtice ſould haif had place, conforme to the Lawis of the Kingdome, notwithſtanding, it is trewthe, that yor lo^ps, vpoun the finiſter and wrong informatioun of the pairtie, concerning the ſlauchter of vmquhile Williame Dow Buquhannane, w^lk thay aggregeit[3] with ſuche circumſtances, and after ſuche a deteſtable maner, as might mak we, who ar innocent, to ſeame odious.

And towcheing the occaſions of the ſlauchter of the young boy and of his fader, and of the forme and maner thairof, grantit ane Warrand for continewatioun of our dyet, till the xiiij of this inſtant; by the quhilk, not onlie we, bot the Gentlemen of the Cuntrie, who ar ſummoned vpoun the Aſſiſe, ar verie far preiudgen and troublit, and the courſe of iuſtice is interruptit and hinderit; and we perſuade oure ſelffis that yor lo^ps in yor awne honourable regaird and diſpoſitioun to iuſtice, wald neuir haue grantit ſuche ane Warrand, yf yor lo^ps had bene treulie informed anent the ſlaughtair of the innocent and harmles young boy; ffor althoght we will not preaſe to extenuat the ſlauchter of vmquhile *Williame Dow*, who, to our regrait, wes miſcheantlie[4] and vnworthelie ſlayne, yitt we may treulie afferme vnto yor lo^ps, that anent the forme, maner, and circomſtanceis of the ſlauchter, as is punctuallie ſett doun in the Petition givin in to yor lo^ps; and anent the forme, maner, and occaſiouns of the ſlauchter of the young boy and his fader, as is lykwayes ſett doun in the Petitioun, and q^lk wes the ground whervpoun yor lo^ps wer moved to grant the ſaid continewatioun, the pairty hes verie far ouerſene thame ſelffis, and paſt the boundis of modeſtie; and hes abuſed yor lo^ps with thair finiſter and wrong informatioun; quhilk, yf thay be able to iuſtifie and mak good, as thay haif ſett doun in the Petitioun, firſt, anent the maner of the ſlaughter of *Williame Dow*, and how that the ſlaughter of the boy proceidit vpoun occaſioun of thair following of ane ſtollin ox, quhilk thay alledgeit in thair Bill[5] wes ſtollin be the ſaid Andro, and eattin at his lykewalk;[6] and that the boy, aſſiſting his fader, preſentit ane hagbute, w^lk miſgaif, and thairefter concurring w^t his fader in perſute of *the Buquhannanis* wes ſlayne;

[1] From the Original, preserved among the *Warrants* of *Secret Council*, General Register House, Edinburgh.
[2] Blood-relations. [3] Aggravated. [4] Wickedly; O. Fr. *meschantement*. [5] Bill of Supplication.
[6] See this Trial, p. 549.

we ar content, without forder ceremonie, to tak the pairtie be the hand,[1] and to rennnce o^r Criminall perſute againes thame: ffor the treuthe is, that thay come to the boyis houſe, quhairof he wes tennent to *the Erle of Perthe*, vpoun ſett purpois and proviſioun; and the boy, apprehending his danger, after he hard the ſhoute raiſed be thame, he fled for ſaulſtie of his lyffe; whome thay followit ane lang way; and haueing ouertane him, and he being thair priſoner, thay broght him bak half ane myle, and in cauld bloode, cruellie and barbarouſlie ſlew and manglit him, but[2] pitie or compaſſioun, with xviij deadlie woundis, with durkis; and haueing caſſin him on his bellie, quhair he lay deade vpoun the ground, thay, the forder to ſatisfie thair raige vpoun the poore corps,[3] cuttit his bak in tua with ſwerdis.

This is the ſimple trewthe of the buſſynes, w^lk we will ſtand to: And thairfoir, we will humblie beſeike y^r lo^ps to caus thair Petitioun to be exhibite be the ſaidis perſonis befoir yor lo^ps, to the intent the trewthe of the circumſtanceis of the ſlaughteris, as thay ar ſett doun in the ſaid Petitioun, may be examined be yor lo^ps, and ordour tane thairin accordinglie. AND ſeeing, we haif, in all modeſtie, and w^t grite patience, as humble and deutifull ſubiectis [to HIS MA^TIE] focht the benefeit of his Lawis, We humelie beſeeke yor lop^ps that the ſame may be grantit vnto ws, and that no forder continewation be grantit to o^r[4] pairty: And yor lo^ps anſuer.

DELIVERANCE *by the Lords of Privy Council.* [*On the back of the foregoing Petition.*]

APUD Halyrudhouſe, decimo Junij, 1623. THE LORDIS Ordanis a Maiſſer to pas and warne both the pairtyis, *the Barone of Achyll, Dauid Drummond of Innermaith*, and *Mr Alex^r Seatoun of Gargonnok*, to compeir befoir the Lordis, vpoun Thuriſday nixt, to heir and ſie ordour tane in the mater within-writtin, as accordis. GEO. CANCELL^S.

Usurpation of the King's authority—Taking captive, &c.

Jun. 18.—ALEXANDER GORDOUN, appeirand of Erleſtoun, and James Gordoun, meſſinger.

Dilaitit of the Vſurpatioun of our ſouerane lordis authoritie, in taking and apprehending of Johnne Glendoning of Drumraſche, and keiping him captiue and priſſoner be the ſpace of thre houris, *in privato carcere*, he being his Majeſteis frie lege, and thai haiſing na power nor commiſſioun for that effect; committit in Februar, or thairby, laſt.

The perſewar paſſis *ſimpliciter* frae the pannellis perſute: Quhairvpoun thay aſkit inſtrumentis.

THE JUSTICE ordanis cautioun to be ffund be the ſaid Alexander, for his entrie, vpoun xv dayis (wairning) for the Kingis pairt; quha fund Vthreid M^c-Dowell of Mondurk, ſouertie, &c.

Resetting of a stolen Purse, &c.

Jun. 18.—JOHNNE DOUGLAS in St Leonardis, and Agnes Muſtard his ſpous.

Dilaitit of the Thiftious Reſetting of ane ſtowin purſe, with ffyve hundreth pundis of gold; and tua jewellis being thairin, worth thre thowſeand pundis; pertening to Sir Johnne Scott of Newburgh; ſtowin fra him be Margaret Ahannay.

[1] To be reconciled. [2] Without. [3] By way of retaliation, no doubt, for the horrible butchery committed upon the person of *Buchanan*, before referred to. [4] Probably for *outher*, *i. e.* either party.

Persewaris, Sir Johnne Scott of Newburgh, Sir Williame Oliphant, knyt.
Prelocutouris in defence, The Laird of Maynes, Mr Laurence McGill, James King.

Eftir the reiding of the Dittay, and accufatioun of the pannell of the crymes thairin contenit; it was allegit be the pannell and thair prelocutouris, that the firft pairt of the Dittay is nawayis relevant, anent the reffett of the ftowin purfe and jewellis thairin; vnles the principall fteiller war firft callit, and ather convict and pwneift for the cryme, or ellis declarit fugitiue thairfoir: For, gif the principall fteiller thairof, viz. Margaret Ahannay, war accufet in this judgement, for the faid allegit cryme, it wald be allegit and verifeit be hir, that gif ony purfe was apprehendit or gottin be hir fra the perfewar, that it was *precium pudicitie*, gevin be him to hir. And thairfoir, quhill firft fcho be callit, na proces.

The Justice, in refpect na dilligence is vfet aganis the faid Margaret Ahannay, Ordanis the pannell to find cautioun for thair re-entrie, vpoun xv dayis wairning: Quha fand James Douglas, portioner of Lugtoun, and Williame Douglas, hatmaker, burges of Edinburghe.[1]

Slaughter.

Jun. 27.—Coill McGillespik McDonald in Collonfay, Archibald McDonald, his fone, and four others, 'feruitouris to the faid Coill.'

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^le Malcolme Mcphie of Collonfay, Donald Oig Mcphie, Dougall Mcphie, Johnne Mcquhirrie, and Ewir Bayne, alias Quhyte; committit in Februar laft.

Persewaris, Marie Mcdonald, the relict; Donald Oig Mcphie, as fone; Katharene, Anne, and Fynwall Mcphies, as dochteris to vmq^le Malcolme; Murdoche Mcphie in Ilay, as brother to vmq^le Donald Oig, and Dougall Mcphie, and as nerreft of kyn to vmq^le Johnne and Ewir.

Johnne Quhyte, wryter, producet the Letteris duelie executed, &c. and proteftit for releif of Archibald Campbell, brother to the Laird of Caddell, cautioner for repoirting thairof.—Coll Mcallafter, ffiear of Dounfkey, as cautioner for the faid Coill, &c. vnlawit, for nocht entrie of ilk ane of the faidis perfones, in the pane of ane hundreth merkis. And ficlyk, the Juftice Ordanis that the faidis Coill, &c. fall be denuncet our fouerane lordis rebellis, and all thair moveabill guidis to be efcheit, &c.

Taking Captive and Strangling, &c.

Jul. 2.—Johnne Grant of Glenmoreiftoun, Finlay Mcean Roy in Invermoreiftoun, and Alexander Dow Mcean Roy, his brother.

Dilaitit for Vfurpatioun of our fouerane lordis authoritie, in taking of vmq^le Donald Mcffindlay Vcnorofiche, mercheand, vpone the landis of Glenmoreiftoun, binding his handis behind his bak, and cayreing him, as ane malefactour, to ane

[1] It is likely that this pursuit was abandoned. At least no farther notices occur in the Record.

woid neir to the landis of Glenmoreiſtoun; quhair thay, as hangmen, hang him vp vpone ane trie of the ſaid woid, and wirreit him to deid;[1] and thaireftir cuttit him doun, and, with thair durkis, gaif him dyuerſe ſtraikis in the breiſt and bellie, to the effuſioune of his bluid in grit quantitie; and thaireftir, cayreit him to ane burne-bra,[2] vnder the quhilk they bureit him, be caſting the ſaid bray vpone him; committit in the moneth of September, 1602 yeiris.

PERSEWARIS, Fynlay Vik-finlay V^c^noroſyche, in Kintaill, as brother; Sir Williame Oliphant of Newtoun, kny^t^, Aduocat to our ſouerane lord.

James Logy, wryter, producet the Letteris, duelie execute, &c., and proteſtit for releif of Mr Alexander M^c^kenzie of Culcovie of his cautionrie.—Patrik Grant of Carroun, as cautioner for the pannell, Ordanit be the Juſtice to be in ane amerciament, for nocht entrie of the ſaid Johnne Grant, in the vnlaw of V^c^ merkis; and of ather of the ſaidis Fynlay and Duncane, in the pane of ane hundreth merkis.

[*Mr Alexander Coluile, Juſtice-Depute.*]

Slaughter.

Jul. 9.—JAMES STEWART, Stewart-depute of Menteith; Duncane Stewart, his brother-germane, and others.[3]

Dilaitit of the Slauchter of vmq^le^ Robert M^c^phatrick Campbell, and vmq^le^ Malcolme M^c^call; committit in Apryle laſt, vpone the landis of Dochallie, on Lochow-ſyde.

INTRAN. *ſimiliter.*

ALLASTER M^c^PHATRIK V^c^ALLASTER, in Balquhidder; Robert Dow M^c^condochie V^c^James, thair; Duncane Oure Stewart M^c^inrie, thair; Archibald Stewart, thair; and Williame M^c^phatrik Stewart, thair.

Dilaittit for the crymes aboue writtin.

PERSEWAR, Patrik Campbell, in Kenderoche, brother to vmq^le^ Robert.

The Laird of Keir takis inſtrumentis of the entrie of the fourtene on pannell (Stewarts), and proteſtis, in that reſpect, for his awin releif, as cautioner, &c.; and as to Duncane Stewart, declairis he hes fallin ſeik, ſen his cuming to Edinburghe, and thairfoir could nocht compeir.—Sir Mungo Murray proteſtis for his releif, as cautioner for the others, 'the ffyve men of Balquhidder.'

THE JUSTICE, with conſent of the perſewar, continewis this matter to ane xv dayis wairning; and Ordanis the pannell to find cautioun for thair entrie.—The Laird of Keir, and Sir Mungo Murray, of new become cautioneris.

[1] Strangled him to death. [2] Burn-brae, a sloping bank, along the foot of which a *burn* or rivulet runs. [3] Their names are, Alexander Stewart, *alias* M^c^ean, in Glenfinglas; Johnne, Archibald, and Andro Stewartis, his thre ſones; Patrik Stewart of Stragartnay; Johnne Stewart, his brother; Robert Stewart, ſone to Andro Stewart of Blairgarrie; Patrik M^c^Kyndlay Gill, in Glenfinglas; Walter M^c^eandowie, *alias* Stewart; Johnne M^c^intyre, ſeruitour to James Stewart; Gilliechreiſt Dewar, Duncane M^c^eane Vaill, and Donald Reoch, ſervand to the ſaid James Stewart.

My Lord of Murray, prefent, obleift him to Warrand and releif the Laird of Keir of his former cautionerie, &c.

Breaking Gardens—Theft, &c.

Jul. 23.—Johnne Rate, and Alexander Deane, cramer.[1]

Dilaitit for the breking of the yairdis[2] of Barnetoun, Piltoun, Barnebougall, Craikcruik, Cragyhall, Langhirdmeftoun, Carlowrie, and Libbertoun, and dyuerfe vtheris yairdis, within Eift and Weft Louthiane: Steilling and away-taking furth thairof, off dyuerfe herbis, bie-fkeppis,[3] fyboes,[4] plantis, kaill-feid, artechoiffis,[5] diftilled watteris, plaittis and trunfcheouris,[6] with ane tyn-ftoupe,[7] furth of the place of Langhirdmeiftoune; committit at dyuerfe tymes, within this moneth bygane.

The perfones on pannell confeffis the Dittay, and crymes thairin contenit.

Verdict. Fand the faidis Johnne and Alexander, conforme to thair awin Judiciall Confeffioun, to be ffylet, culpable, and convict, &c.

The Juftice Ordanit thame to be tane bak to waird, thair to remane quhill he be advyfet with the Lordis of Secreit Counfall, anent the Dome to be pronuncet aganis thame, for the faidis crymes.

Jul. 25.—Sentence. The Juftice Ordanit the faidis Johnne Rait and Alexander Deane to be tane to the Burrow-mure of Edinburghe, and thair to be Hangit quhill thay be deid; and thair haill moveable guidis to be efcheit, &c.: And that by virtue of the following Warrand of the Lordis of Secreit Counfall.

Justice, Juftice clark and 3our deputis. 3ow fall pronunce Sentence of daith againft Johnne Rait and Alex^r Deane, cramer, who was convict of befoir in Muffilburghe, for the breking of 3aird is and fteilling of findrie bie-fkepis furth of the fame; and who, fince thair apprehenfioun, baif of lait bene convict befoir 3ow of the fame crymes; committit be thame fince thair laft convictioun and pwneifment following thairupoun. And that 3ow caufe the Sentence of daith be execute vpone thame: Quhairanent theife prefentis fall be vnto 3ow ane fufficient Warrand. Gevin at Halyrudhous, the xxiiij day of July, 1623.

Geo. Cancell^s. Glencarne. Nithisdaill. Oliphant. Hamilton.

Sorcery—Witchcraft.

Aug. 1.—Thomas Greave.

Dilaitit of dyuerfe poyntis of Sorcerie and Witchcraft following, viz.: For cureing of the perfones following, be Sorcerie and Witchcraft, to wit: Ane fone of Archibald Arnote in the Wayne, of ane heavie and vncouth[8] feiknes: Ane fone of Andro Geddis in Freuchie, alfo hevilie diffeifit: Ane bairne of Thomas Kilgoures in Falkland, viffeit with ane grevous feiknes. Item, ffor cureing, be

[1] Huxter; one who keeps a petty booth for the sale of small wares. [2] Gardens. [3] Beehives. [4] A young or small sort of onion. [5] Artichokes. [6] Trenchers. [7] Tin flagon. [8] Strange; unusual; unaccountable.

Sorcerie and Witchcraft, and making of certane croces and ſinges,[1] off Dauid Chalmer in Lethame, and be cauſeing waſche his ſark[2] in ane South-rynnand watter, and thairefter putting it vpone him; quhairby he reſſauit his helthe. ITEM, ffor cureing of ane woman in Ingrie, beſyde Leſlie, of ane grevous ſeiknes, be taking the ſeiknes af hir and puting it vpone ane kow; quhilk kow thaireſtir ran woid,[4] and deit. ITEM, ffor cureing off Alexander Lauſones bairne, in Falkland, of grit ſeiknes, be Sorcerie, and making of certane ſignes, and vttering of dyuerſe vnknawin woirdis. ITEM, ffor cureing of ane woman, duelland beſyde Margaret Douglas, of ane grit and panefull ſeiknes, be drawing hir nyne tymes bakward and fordward be the leg. ITEM, ffor cureing of Michaell Glaſſies wyfe, in the Mylnes of Forthe, of ane grevous ſeiknes, be cauſſing brek ane hoill in the wall, vpone the North ſyde of the chymnay, and putting ane heſp[4] of yairne thre ſeveral tymes furth at the ſaid hoill, and taking it bak at the dur; and thaireftir, cauſeing the ſaid Michaellis wyfe ix tymes paſs throw the ſaid heſp of yairne, and thairby to procure hir help. ITEM, ffor cureing, be devillerie and Witchcraft, of Williame Kirkis bairne, in Tulliebule, of the ſeiknes callit *Morbus caducus*,[5] be ſtraiking bak the hair of his heid, taking ane lang claith, with certane vnguent and vther inchantit matter, furth of ane buiſt,[6] and rowing[7] the bairne nyne tymes within the ſaid claith, vttering, at ilk tyme of the putting about of the claith, dyuerſe wordes and croces and vther ſignes; and be that meanis pat the bairne aſleip; and thairby, throw his devillerie and Witchcraft, curet the ſaid bairne of the ſaid ſeiknes. ITEM, vnderſtanding that Johnne Fiſcher, in Achalanſkay, was hevielie diſeaſit of a grevous and vnknawin fever, vpone aduerteiſment gevin to him thairof, he cauſit bring the ſaid Johnne Fiſcheris ſark to him; quhilk ſark being brocht, the ſaid Thomas, turning it over, cryit out at that inſtant, 'Allace! the Witchcraft appointit for ane vther hes lichted upone him!' And, luiking at the breiſt of the ſark, he tauld 'that the ſeiknes was nocht cum as ȝit to his heart.' And eftir ſome croces and ſignes maid be the ſaid Thomas vpone the ſark, delyuerit the ſark to Jonet Patoun, the ſaid Johnne Fiſcheris mother, commanding hir, with all ſpeid to ryn to him thairwith; and declairit to hir that 'Gif ſcho come thairwith, befoir his heart was aſſaulted,' he ſould convaleſe; At quhais cuming to him with the ſaid ſark, the ſaid Johnne hir ſone was deid. ITEM, ffor practizeing of dyuerſe poyntis of Sorcerie vpone Williame Beveridge, in Drumkippie, in Salen, and cureing him thairby of ane grevous ſeiknes, be cauſeing him pas throw ane heſp of yairne thre ſeuerall tymes; and thairefter burning the ſaid heſp of yairne in ane

[1] Crosses and signs. [2] Shirt. [3] Mad. [4] A hasp of yarn is equal to twelve '*cuts*,' or six '*heer*.' Each '*cut*' goes six score times round the reel. [5] Epilepsy, or the falling sickness. Perhaps it may refer to consumption, '*decay*' or '*decline*.' [6] Out of a small box or chest. [7] Wrapping; *rolling*.

grit ffyre, quhilk turnet haillilie blew. Item, ffor cureing of Margaret Gibſones ky,[1] in Balgonie, be putting thame thryſe throw ane heſpe of yairne, and caſting of certane inchantit watter, inchantit be him, athort[2] the byre; and thairby making thair milk to cum to thame agane, quhilk thay gaif nocht ane moneth ofbefoir.[3] Item, at Martimes, 1621, Elſpeth Thomeſone, ſiſter to Johnne Thomeſone, portioner of Pitwar, being viſſeit with ane grevous ſeiknes, the ſaid Thomas com to hir hous in Corachie, quhair, eftir ſichting and gripping of hir, he promeiſt to cure hir thairof; and ſo this effect callit for hir ſark, and deſyret tua of hir nerreſt freindis[4] to go with him: Lykas, Johnne and Williame Thomeſones, hir brether, being ſent for, paſt with the ſaid Thomas, in the nicht ſeaſone, fra Corachie towardis Burley, be the ſpace of tuelff myles; and inioynet the tua brethir nocht to ſpeik ane woird all the way; and quhat euir thay hard or ſaw, nawayis to be effrayed, ſaying to thame, 'it mycht be that thai wald heir grit rumbling, and ſic vncouth and feirfull apparitiones, bot nathing ſould annoy thame!' And at the ffurde be-eiſt Burley, in ane South-rynning watter, he thair wuſche the ſark; during the tyme of the quhilk waſching of the ſark, thair was ane grit noyſe maid be ffoullis,[5] or the lyll beiſtis,[6] that arraiſe and flichtered in the water. And cuming hame with the ſark, pat the ſamyn vpone hir, and curet hir of hir ſeikens: And thairby committit manifeſt Sorcerie and Witchcraft. Item, ffor cureing of Williame Couſines wyfe, be Sorcerie and Witchcraft, be cauſing hir huſband heit the coulter of his pleuch, and cule the ſamyn in watter brocht from Haly Well of Hillſyde; and thaireftir, making certane coniurationes, croces, and ſignes vpone the watter, cauſet hir drink thairof for hir helth; and thairby, be Sorcerie, curet hir of hir ſeiknes. Item, ffor cureing, be Sorcerie and Witchcraft, of James Mwdie, with his wyfe and childrene, of the fever; and namelie, in cureing of his wyfe, be cauſeing ane grit ffyre to be put on, and ane hoill to be maid in the North ſyde of the hous,[7] and ane quik hen[8] to be put furth thairat, at thre ſeuerall tymes, and tane in at the hous-dur, widderſchynnes;[9] and thaireftir, taking the hen and puting it vnder the ſeik womanis okſtar,[10] or airme; and thairfra, cayreing it to the ffyre, quhair it was haldin doun and brunt quik thairin; and be that devilliſch maner, practizet be him, curet hir of hir ſeiknes: ffor the quhilk, the ſaid Thomas reſſauit xx lib. fra hir huſband. And laſt, ffor commoun Sorcerie and Witchcraft, practizet be him, and abuſeing the people thairby; expres aganis Godis devyne Law, and Actis of Parliament maid aganis Sorceraris.

Verdict. The Aſſyſe, being ryplie advyſet thairwith, togidder with certane

[1] *Kine;* cattle. [2] Athwart; across. [3] Which they had not yielded for the space of a month. [4] Kinsmen; relations. [5] Water-fowl. [6] Little 'beasts;' *Scottice*, for some sort of small birds or fowls, such as snipes, &c. [7] A hole to be made in the north wall of the house. [8] A live fowl. [9] Backwards; contrary to the course of the sun. [10] Arm-pit.

Depofitiones producet be Mr Johnne Cowdoun, Minifter at Kynrois, Mr Edmond Myles, Minifter at Cleifche, Mr Robert Coluile, Minifter at Cleifche, ffor verificatioun thairof; thay, be the declaratioun of Williame Dempftartoun, chanceller, ffand, pronuncet, and declairit the faid Thomas Greave to be ffylet, culpable, and convict of the haill poyntis of Dittay aboue writtin.—SENTENCE. To be tane to the Caftell-hill of Edinburghe, and thair to be Wirreit at ane ftaik, quhill he be deid; and his body thaireftir to be Brunt in afches, as culpable and convict of the faidis crymes of Sorcerie and Witchcraft.

Offices of the Clerkship of Justiciary-general and Master of the Ceremonies, &c.

Nov. 28.—SIR ARCHIBALD NAPER of Merchinftoun, kny[t], Thefaurer-depute to our fouerane lord of this Kingdome, producet his Maiefteis Gift, grantit to him, vnder his hienes Previe feall, of the Offices of the CLERKSCHIP OF JUSTICIARIE-GENERALL, and MAISTER OF THE CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther folemne Affembleis, quhair honourable ceremoneis ar accuftomat and neceffarie to be vfet, within the kingdome of Scotland; with all richtis, privileges, liberteis, feyis, cafualteis, proffeitis, and deuteis quhatfumeuir, pertaining and belonging thairto; during all the dayis of the faid Sir Archibaldis lyftyme: Vacand in his Maiefteis handis, be dimiffioun of Sir Johnne Cokburne of Ormeftoun, kny[t], laft Juftice Clerk, and Maifter of the faid Ceremoneis. Dated at Royftoun, the fext day of November, 1623.—Which Gift was ordanit to be infert in the Regifteris of Adiornall, *ad futuram memoriam.*

Commission of Justiciary,

IN FAVOUR OF SIR GEORGE ERSKINE OF INNERTEILL.

Jan. 23, 1624.—MY Lord of Innerteill, as Juftice to our fouerane Lord, producet his Maiefteis Commiffioun of Jufticiarie; and defyret the famyn to be infert in the Regifter of Adjournal, *ad futuram memoriam.*

JAMES R.

JAMES, by the grace of God, King of Grite Britane, France, and Ireland, defender of the ffaithe: To all and findric our leigis and fubiectis whome it effeiris, to whofe knowledge thir our Letteris fall come, greating. FORSAMEKILL AS, the place and Office of the JUSTICE of this our Kingdome is now voyde, and the adminiftratioun of Juftice, in matteris propper to that judgement, ceaffes by the abfence of thofe who formarlie fuppleit that place: AND whear as, the frequent occafioun, daylie occurring within this our kingdome, requyres a prefent choife to be maid of fome fufficient and qualifeit perfone to exerce the faid place and office: And We, vnderftanding the goode affectioun of our truftie and weilbelouit counfalour, *Sir George Erfkine* of Innerteill, to do ws feruice, and that he is a perfone of found and vpricht judgement, and vtherwayis accompleifchet and furneift with giftis anfuerable to the

[1] From the peculiarity of this document, it has been thought right to preserve it entire, without abridgement.

dignitie of fuche ane imployment: Thairfoir, We haif maid and conftitute, and be the tennour heirof makis and conftitutis, the faid Sir George our Justice, and geves to him the Office thairof, with all honnouris, digniteis, prevelegis, and prerogatiues belonging thairto; to be poffeft, bruiket, vfed, and exerced be him als frelie and amplie, in all refpectis and conditiones, as ony vtheris his predicefforis in the faid Office formerlie bruiket the fame; with power to him to feufe and hald Juftice-Courtis within the Tolbuith of our burghe of Edinburghe, and vtheris pairtis of our Kingdome, accoirding as the neceffitie of oure feruice fchall requyre, and to proceid and minifter juftice in all and findrie materis occurring in that judgment, and vpone all perfones of quhatfomeuir qualitie, that fall be prefentit in judgement befoir him, to abyde thair tryell; and accoirding as thay fall be fund Guiltie or Innocent of the crymes to be obiectit vnto thame, and to be laid to thair chairge, to caus juftice be minifirat vpone thame, conforme to the lawis of our realme: Affyffes neidfull, to this effect, vnder the vfuale and accuftomed panes, to fummond, wairne, choofe, and caus be fuorne; and to creat officiaris and memberis of Court neidfull; and all vther thingis neidfull towardis the executioun of this our Commiffioun to do and vfe, whiche laughfullie, in fuch caifes, may be done; fferme and ftable halding, and for to hald all and quhatfomeuir thingis fall be laughfullie done heirin. Chairgeing heirfoir yow, all our faid leiges and fubiectis, to reuerence, acknowledge, and obey our faid Juftice, in all and everie thing tending to the executioun of this our Commiffioun: As yow and everie ane of yow will anfweir to us vpone the contrair, at your perrell. This our Commiffioun, dureing our will and pleafour, and ay and quhill we difcharge the fame, to indure. Gevin vnder our fignet, At Ed^{n}, the tuentie day of Januare, and of oure reigne the lvij and xxj yearis, 1624.

Geo. Cancell^{s}. Melros. Lauderdaill. R. Cokburne. Kilsayth.
W. Oliphant. A. Hay. Ar. Naper. J. Hamilton.

[*Sir George Erfkyne of Innerteill, knycht, Juftice.*]

Egiptians—Vagabonds—Sorners, &c.

Jan. 23.—Capitane Johnne Faa, Robert Faa, Samuell Faa, Johnne Faa younger, Andro Faa, Williame Faa, Robert Broun, Gawin Trotter, all Egiptianis, Vagaboundis, and commoun Thevis, &c.

Being enterit vpone pannell be the Magiftratis of Ed^{r}, dilaitit, accufet, and perfewit be Sir Williame Oliphant of Newtoun, kny^{t}, of the cryme vnderwrittin, viz. Forsamekill as, ffirft, be Act of Secreit Counfall, maid in the moneth of Junij, or thairby, in the yeir of God 1603, and Proclamatioun following thairupoun, commanding and chargeing the Vagaboundis, Soirneris, and commoun Thevis, commonlie callit Egiptianes, to pas furth of this Kingdome, and to remane perpetuallie furth thairof, and nevir to returne agane within the famyn, vnder the pane of daithe; quhilk Act of Secreit Counfall, and Proclamatioun following thairupoun, be the 13 Act of our fouerane lordis 20 Parliament, haldin at Edinburgh vpone the 24 of Junij, the yeir of God 1609 yeiris, is ratifeit, approvin, and confirmet be his Maieftie and Eftaitis of Parliament than convenit; and the fame Act ordanit to haif force and executioun, eftir the firft day of Auguft nixt thaireftir following, in the foirfaid yeir of God I^{m}.Vj^{c}. and nyne yeiris; eftir the quhilk tyme, gif ony of the faidis Vagaboundis callit Egip-

TIANES, alſweill wemen as men, ſall be fund within this kingdome, or ony pairt thairof, it ſall be leaſum to all his Maieſteis goode ſubiectis, or ony of thame, to caus tak, apprehend, impriſſone, and execute to death, the ſaidis Egiptianes, ather men or wemen, as commoun, notorious, and condempned Theves, by ane Aſſyſe, only to be tryed[1] that thay ar callit, knawin, and repute and haldin Egiptians: In the quhilk caice, quhatſoeuir of the Aſſyſe hapins to clange ony of the foir-ſaidis perſones, Egiptianes, pannelled as ſaid is, ſalbe perſewit, handillit, and cenſuret as committeris of Wilfull Errour. As the ſaidis Actis of Secreit Counſall, Proclamatioun following thairupoun, and Act of Parliament aboue writtin, deulie publeiſt, in the ſelff proportis. Nochtwithſtanding quhairof, it is of verritie, that the foirnamet aucht perſones impannelled, and ilk ane of thame, being Vagaboundis, Soirneris, cowmoun Thevis, callit, knawin, repute, and haldin EGIPTIANES, in plane contempt of his Maieſteis lawis and Actis of Parliament, hes proudlie repairit to this kingdome, remanit and abiddin within the ſamyn, and nawayis depairtit nor paſt furth thairof, ſen the ſaid firſt day of Auguſt, 1609 yeiris, appointit for thair away-paſſing; incurring thairthrow the pane and pwneiſchment aboue writtin, mentionet in the ſaid Act of Parliament.

ASSISA.

James Lokhart, elder of Lie, ... Leith of Hairthill, Williame Sydſerff of Ruchelaw.[2]

VERDICT. The Aſſyſe, for the maiſt pairt, be the declaratioun of the ſaid James Lokhart of Lie, chanceller, ffand, pronuncet, and declairit the ſaidis perſones (being all Vagaboundis, and repute and haldin for EGIPTIANIS) to be Giltie, culpable, and convict of contravening the tennour of the ſaid Act of Parliament, &c.

THE JUSTICE continewis the pronunceation of Dome, vpone the former[3] convictioun, to the morne; that in the meane tyme he may advyſe with the Lordis of Secreit Counſall thairanent: And ordanit the pannell to be tane bak to waird, in the meane tyme.

Jan. 24.—SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and thair haill moveabill guidis, gif thay ony haif, to be eſcheit to his Maieſteis vſe, &c.[4]

Egiptians—Sorners, &c. (Females.)

Jan. 29.—HELENE FAA, the relict of vmq^le^ Capitane Johnne Faa; Lucrece Faa, ſpous to James Broun; Elſpeth Faa, brether-dochter to the Capitane; Katharene Faa, relict of vmq^le^ Eduard Faa;

[1] Proved; established. [2] The remainder are burgesses of Edinburgh. James Hopper of Bourhouſſis, the Laird of Coulter-Cuming, ... Ogilvie of Boyne, ... Maxwall of Cowhill, and six others, ('mercheandis,') are 'vnlawit 100 merkis ilk ane of thame.' [3] Preceding. [4] See the following article, Jan. 29, and Mar. 22, where the proceedings against their helpless widows are recorded.

Meriore Faa, ſpous to James Faa; Jeane Faa, the relict of vmq^le Andro Faa; Helene Faa, the relict of vmq^le Robert Campbell; Margaret Faa, dochter to vmq^le Eduard Faa; Iſſobell Faa, the relict of vmq^le Robert Broun; Margaret Vallantyne, relict of Johnne Wilſoun; Elſpeth Faa, dochter to vmq^le Henrie Faa.

Dilaitit for contravening the 13 Act of his Maieſteis tuentie Parliament, haldin at Edinburgh, the 24 of Junij, 1609 yeiris, maid aganis Egiptianis, chargeing thame, alſweill wemen as men, to pas furth of this kingdome, and to remane perpetuallie furth thairof; and nevir to be fundin within the ſamyn, eftir the firſt day of Auguſt thaireftir, in the ſaid yeir of God 1609, vnder the pane of deid: And the foirnamet perſones, being all Theves, Vagaboundis, and Egiptianis, ſa repute and haldin, and tane as people of that vnhappie race and ſocietie, hes, be thair remaning within this kingdome eftir the tyme foirſaid, appointit for thair away-paſſing furth thairof, contravenit the tennour of the ſaid Act of Parliament, and incurrit the pwneiſchment aboue writtin, mentionet thairintill.

Verdict. Giltie, culpable, and convict of the contravening of the foirſaid Act of Parliament.—Sentence. To be tane to the place of thair executioun, in ſome convenient pairt, and thair to be Drowned quhill thay be deid; and all thair moveabill guidis, gif thay ony haif, to be confiſcat to his Maieſteis vſe, &c.

(Mar. 22.)—The above perſons, together with Alexander Faa, ſone to Eduard Faa, Johnne Faa and Francie Faa, ſones to vmq^le Capitane Johnne Faa, and Harie Broun, brother to vmq^le Robert Broun, being brocht furth of waird, and preſentit of new agane vpone pannell, as thay that war convict of Egiptianes, and the Dome of daith pronuncet aganis ellevin of thame, vpone the xxix day of Januar laſt, the executioun quhairof was ſuperceidit, be the Lordis of Secreit Counſallis Warrand and directioun, vnto the tyme our ſouerane Lordis will and pleaſour war knawin thairanent.

His Maiesteis *Letter and Directioun ſent to the Counſall.*

To our right truſtie and right weilbelouit counſalour, Sir George Hay of Kynſawnes, kny^t, onr Chanceller, and to our right truſtie and right weilbelouit couſinges and counſalouris, and vtheris our truſtie and weilbelouit counſalouris, the Erles, Lordis, and vtheris of our Previe Counsell, in our kingdome of Scotland.

James R.

Right truſtie and right weilbelouit counſalour, right truſtie and right weilbelouit couſens and counſalouris, and vtheris our truſtie and weilbelouit counſalouris, We greete yow well. We haue vnderſtood, by your Letter of the 29 of Januar laſt, that a nomber of theſe Theeves and counterfooted Vagaboundis, commonlie callit Egiptianis, being apprehendit be your directioun, war thereftir put to a Criminall tryell, and being lawfullie convicted, that eight of the men wer executed, and that the reſt, being aither childrene and of leſſe-age, and wemen with chyld, or geving ſucke to childrene, ȝe haue therfore committed thair perſones to priſſone, ſuperceiding the executione of the Sentence pronunced

aganis thame, till yee ſhould acquaynte ws, and know oure further pleaſoure thairanent. In whiche regaird, theſe are to certefie to yow, that as We allow well of the courſe taiken for executeing of the men, ſo now, in colde bloode, (theſe children and weemen haueing beene ſoe long kepte priſoneris,) and cheſlie in reſpect of that which yee wryte to be the preſent eſtaite of moſt part of theſe weemen, We can not bot inclyne to pittie and compaſſion of them. Wherfore, as We ar willing that their lyues be ſpared, ſoe that nather thame ſelues, nor any others of that kynd may be therby emboldned to preſume vpone our clemencie, yee ſall caus thame act them ſelues to depairt, with thair childrene, furth of that our kingdome, between and ſuch a competent day as yee ſhall think fitting, for that effect, to preſcriue; vnder the payne of death, to be inflicted (without any forder proceſs or dome) vpone them, wherſoever they can be apprehendit within our ſaid kingdome, efter the ſaid day. And for your putting them to libertie, (nochtwithſtanding the Sentence pronunced againſt them,) vpone condition foirſaid, theſe ſhalbe vnto yow a Warrant ſufficient. And ſoe We bid yow farewell. From our Honour of Hampton, the 13 of Merche, 1624.

The Justice, conforme to his Maieſteis Letter and directioun, cauſit the haill Egiptianis aboue writtin, preſented vpone pannell, act thame ſelffis, lyk as thay and ilk ane of thame, of there awin frie motiue, and with the bleſſing of God to his Maieſtie and Counſall, become actit and obleiſt to depairt and pas away with thair childrene furth of this realme; and nevir to be fund thairintill, eftir the tuentie-tua day of Apryle nixtocum, vnder the payne and pwneiſchment of daith, without ony forther proces or doome, to be inflicted but fauour[1] vpone them, quhaireuir thay ſall be fund or apprehendit, within this kingdome, eftir the ſaid day.

Treasonable and Masterful Theft and Stouthreif.

Mar. 3.—[Dame Margaret Ogilvie, Countess of Marschell,[2]] Sir Alexander Strauchane of Thornetoun, kny^t, (hir ſpouſe,) and Mr Robert Strauchane, Doctour in Phiſik.

Dilaitit of the Maiſterfull Thift and Stouthe-reiff, ffurth of the Place of Benholme, pertening to vmq^le George Erle Marshell, of certane his Lordſchipis jouellis, ſiluer-plait, houſhald-ſtuff, gold, ſiluer, euidentis, writtis, and vtheris guidis, at lenth expreſſit in the criminall Letteris direct thairupoun, at the inſtance of our ſouerane lordis Aduocat; committit in October 1622, a littill befoir the ſaid Erles deceiſe.[3]

Persewar.	Prelocutouris in defence.
Sir Williame Oliphant, kny^t.	Mr Thomas Hoip, Mr Lueis Stewart.

The perſones enterit on pannell takes inſtrumentis of thair entrie, and proteſtis for releif of Sir George Afflek of Balmanno of his cautionerie. There was preſented the following

Warrand *of the Lordis of Secreit Counſall.*

Apud Ed^b, *ſecundo die menſis Martij*, 1624. The Lordis of Secreit Counſall, ffor ſome ſpeciall

[1] Without favour or mercy. [2] Daughter of James, *sixth* Lord Ogilvy of Airly. She was the second wife of George, *fifth* Earl Marischal. [3] He died at Dunottar Castle, Apr. 2, 1623, in the seventieth year of his age. He had studied at several foreign Universities, and was an accomplished and learned individual. Besides his Embassy, he had filled the high office of Lord High Commissioner to the Parliament of Scotland, by Commission under the Great Seal, Jun. 6, 1609.

conſiderationes moveing thame, Ordanes and commandis the Juſtice, Juſtice-clerk, and thair deputis, to continew the dyet appointit to Dame Margaret Ogilvie, Countes of Marschell, Sir Alexander Strauchane of Thornetoun, hir ſpous, and vtheris perſones ſpecifeit in the Criminall Letteris raiſit þairupoun, ffor þair compeirance befoir þe Juſtice, vpone the thrid day of Marche inſtant, to vnderly the Law for the crymes of Thift and Stouthe-reiff of the houſhald ſtuff, inſight pleniſſing, ſiluer plait, and vtheris goodis pertening to the lait Erle of Merſchell, and at lenth ſpecifeit in the ſaidis criminall letteris raiſit at þe inſtance of his Maieſteis Aduocat, vntill the ſecund day of Julij nixtocum; takand new cautioun of þe defenderis, for þair compeirance that day, conforme to the ordour. Quhairanent þe Extract of þis Act ſall be vnto þe ſaid Juſtice, Juſtice-clerk, and thair deputis, ane ſufficient Warrand.

Extractum *de Libris Actorum Secreti Conſilij, ſ. d. n. Regis, &c.* Jacobus Prymrois.

Sir George Afflek of new becomes cautioner for the ſaidis Dame Margaret, &c., vnder the panes contenit in the Actis of Parliament.

[*Mr Alexander Coluile of Blair, Juſtice-Depute.*]

(Jul. 2.)—Another Warrant, dated 'at Halyrudhous, the firſt day of July'—and ſigned by 'Geo. Cancell^r. Mar. Morton. Linlithgow. Melros. Lauderdaill. Aw. Carnegie'—directs the caſe to be continued 'vntill the xxvij of July inſtant, vpone new cautioun:'—'And that yow diſpens with the perſonall compeirance of the Lady Marſchell and Doctour Strauchane.'

(Jul. 27.)—A third Warrant, dated 'at Halyrudhous, the xxij of July,' and ſubſcribed, 'Geo. Cancell^r. Mar. Melrois. Lauderdaill. J. Kokburne. Kilſayth.'—David Levingſtoun of Donypace becomes cautioner for their entry on the aucht day of December nixt.

(Dec. 8.)—No procedure is entered in the Record of this date.

[*Sir George Erſkine of Innerteill, kny^t, Juſtice.*]

Treasonable and Masterful Theft, &c.

Mar. 3.—James Keith of Benholme.

Dilaitit of airt and pairt of the treſſonabill[1] and theftious ſteilling, be way of Maiſterfull-thift and Stouthe-reiff, in the moneth of October, 1622 yeiris, ffurth of the Place of Benholme, off ane grene coffer, pertening to vmq^le George Erle Marschell, with the jowellis and vtheris vnder writtin being thairintill, alſs pertening to his lordſchip, viz. of Portugall ducattis, and vtheris ſpaces[2] of foreigne gold, to the availl[3] of tuentie thowſand pundis, or thairby; threttie-ſax duſſane of gold buttones; ane ritche jowell, all ſet with dyamontis, quhilk the ſaid vmq^le Erle reſſauit as ane gift gevin to him the tyme he was Ambaſſadour in Denmark, worth ſex thowſeand merkis; the Quene of Denmarkis pictour in gold, ſet about with ritche dyamontis, eſtimat to fyve thowſeand merkis; ane jaſp ſtane for

[1] *Treasonable*, as being committed by a landed Gentleman, in terms of an Act of Jac. VI. [2] Species. [3] Worth; value.

ſteming of bluid,[1] eſtimat to fyve hundreth French crownes; ane chenȝie[2] of equall perle, quhairin was foure hundreth perles gritt and ſmall; tua chenȝeis of gold, of tuentie-foure vnce wecht; ane vther jowall of dyamontis ſet in gold, worth thre thouſeand merkis; ane grit pair of bracelettis, all ſett with dyamondis, pryce thairof fyve hundreth crownes; the vther pair of gold bracelettis, at ſex hundreth pundis the pair; ane turcas[3] ring, worth ten French crownes; ane dyamond ſet in ane ring, price xxviij French crownes; with ane number of vther ſmall ringis, ſet with dyamondis and vtheris ritche ſtanes in gold, worth thre hundreth Frenche crownes; mair, ſextene thouſeand merkis of ſiluer and gold, reddie cunȝeit,[4] quhilk was within the ſaid grene coffer; togidder with the haill Tapeſtrie, ſiluer-work, bedding, and vther guidis, geir, and pleniſſing, being within the ſaid Place, particulerlie ſpecifeit and ſet doun in the Criminall Letteris direct aganis the ſaid James Keyth of Benholme and his complices.[5] As also, for airt and pairt of the thiftious ſteilling and away-taking, be way of maiſter-full Thift and Stouthe-reiff, in the moneth and yeir of God foirſaid, furth of the ſaid Place, of ane grit clothe bag, with the ſaid vmq[le] Erle his haill euidentis[6] and writtis of his landis and leving of Benholme, and vtheris his landis and barroneis, being thairintill; and remanent capitall crymes contenit in the ſaidis Criminall Letteris, &c.

Andro Barclay of Vnthank, as cautioner, is decernit and ordanit to be in ane amerciament, viz. for nocht entrie of the ſaid James Keyth, in the pane and vnlaw of ane thowſeand merkis: And ſiclyk, that the ſaid James be denuncet our ſouerane lordis rebell, and put to his hienes horne; and his haill moveabill guidis to be eſcheit and inbrocht to his Maieſteis vſe, as fugitiue fra his hienes lawis for the ſaidis crymes.

Stealing Corn, &c.

Mar. 24.—Harie Menteith of Panſteid; James and Williame, his tua ſones; Andro Menteith, ſone-naturall to the ſaid Harie; Johnne Menteith, callit of Balderſtoun; and ſix others.

Dilaitit of the thiftious ſteilling and away-taking, furth of Thomas Kincaid of Warieſtoun his barnes of Saltcoittis, in the Eiſt-Kerſe, lyand in the barrony

[1] Various virtues were anciently attributed to certain precious stones, such as the present, (*stemming* of blood,) as antidotes against poison, &c. The following curious entry occurs in the Books of *the Lord High Treasurer of Scotland*, Feb. 9, 1504.—'Item, to the ſaid *Williame* [*Foular*, potingary,] for ane bludestane, and thre vnce ꝑir ſtuf, for the Quene, for bleding of ꝑe neſe; eftir ane R. (*recipe*) of *Maiſter Robert Schaw*, xxij ſ.' [2] Chain, or string. [3] Turquois. [4] Ready coined. [5] The above highly interesting detail shows, in a very striking point of view, the immense wealth which was accumulated and enjoyed by many of the Scottish Nobility at this period. Other portions of this Collection prove that considerable riches were possessed by some of the smaller Gentry, where such a display might not have been expected. [6] Title-deeds.

thairof, and ſcherefdome of Sterling, off threttie bollis of aittis, ſaxtene bollis of peis, and tuentie bollis beir, pertening to the ſaid Thomas Kincaid.

The perſewar producet our ſouerane lordis Letteris, be vertew quhairof the ſaidis perſones, and ilk ane of thame, ar denuncet rebellis, and put to the horne, for nocht finding of cautioun to haif compeirit, &c.; and proteſtit for relief of Johnne Kincaid portioner of Gogar, his cautioner.

[*Mr Alexander Coluile of Blair, Juſtice-Depute.*]

Murder.

Jun. 5.—James Galbraith, in Lekkie.

Dilaitit of the Murthour and Slauchter of vmq^le James Broke in Kirkpatrik, his brother-in-law; committit vnder nycht, betuix Kirkliſtoun and Corſtorphin, in thair cuming furth the hie-way togidder towardis Edinburgh, in the moneth of Apryle laſt, in the begynning thairof.

Assisa.

James Tennent of Lynhous, James Burnet of Barnes,
Johnne McFarlane of Arrochar, Alexander Lokhart of Braidſchaw.[1]

The pannell confeſſis, in preſens and audience of the Aſſyſe, the Murthour and Slauchter contenit in his Dittay.

Verdict. The Aſſyſe being ryplie and at lenth advyſet with the Dittay, togidder with the ſaid James Galbraith his awin Confeſſioun maid in judgement, with his Depoſitioun maid be him, vpone the thrid day of Junij inſtant, in preſens of the haill lordis of Counſell and Seſſioun, confeſſing the Murthour aboue writtin, thay all in ane voce ffand, pronuncet, and declairit the ſaid James to be ffylet, culpable, and convict.—Sentence. To be tanc to the Mercat-croce of Edinburgh, and thair his heid to be ſtrukin frome his body; and his haill guidis and geir to be eſcheit, &c.

Theft—Slaughter—Fire-raising—Intercommuning with the MacGregors, &c.

Jul. 17.—Johnne Roy McFarlane, ſone to Andro of Gortane, and others.[2]

Dilaitit of the ſeuerall crymes of Thift and Slauchter following, viz. The ſaid *Johnne Roy M^cfarlane*, ffor airt and pairt of the Slauchter of vmq^le Williame M^cclane in Blairvak, ſervand to vmq^le Duncane M^cfarlane of Blairvak, for the tyme; committit vpone the thrid day of October laſtbypaſt, 1623 yeiris: And

[1] The rest of the Assise were tradesmen. James Tennent, chanceller.

[2] The remainder of the pannels were, 'Johnne Beg M^ccauiſe M^cfarlane (in Stukewa), Duncane M^ccorrie M^cewin (M^cfarlane in Ardlowie), Johnne M^cinnair M^cfarlane in Garboyle, Thomas Moir M^cfarlane, (ſone to Duncane Dow M^cfarlane in Morlagane,) Allaſter Blair (in Brachairne), Johnne (Dow) Blair, his ſone, Johnne Gar M^cgilliemichell, (ſeruitour to Robert Abroche McGregour,) Duncane Bayne M^ccartnay, (ſeruand to Robert Abroche M^cgregour.)'

ſiclyk, for airt and pairt of the treſſonable Raiſing of ffyre, and Burning of the houſe of Abervrchill, pertening to vmq^le^ Colene Campbell of Abervrchill, being in company with Johnne Dow M^c^Condochie Bayne, his maiſter, and vtheris his complices, at the ſaid Burning; committit a ten yeir ſyne, or thairby. ITEM, the ſaid *Johnne Beg M^c^Cauiſe M^c^farlane*, ffor the thiftious reſſetting of ane blak kow, quhilk was ſtowin be Johnne Roy M^c^Williame M^c^farlane, furth of the landis of Balliemoir, fra Andro M^c^Williame M^c^farlane, in the moneth of December laſt: And ſiclyk, for airt and pairt of the ſteilling of tua ky furth of the landis of Cloſwrak, pertening to Callum M^c^farlane, indueller thair: And alſe, for airt and pairt of the thiftious ſteilling, at the leiſt reſſetting, of ane blak horſe, ſtowin be Duncane M^c^corriche M^c^eane M^c^farlane, furth of the cuntrie of Argyle; committit in Marche laſt. ITEM, the ſaid *Duncane M^c^corrie M^c^eane M^c^farlane*, ffor airt, pairt, and being in company with Johnne Roy M^c^Williame M^c^farlane, at the ſteilling of ane broun kow, a four yeir ſyne, or thairby: And for airt and pairt of the ſteilling of nyne lambes, pertening to Johnne M^c^corrie M^c^farlane and Patrik M^c^corrie M^c^farlane in Ardmulrig, furth of the Mure of Ben-Mourlig, in the moneth of Junij I^m^.Vj^c^.xxiij yeiris: And alſo, for airt and pairt of the ſteilling of ane gait[1] furth of the landis of Glencroe, in the moneth of October, the yeir of God I^m^.Vj^c^. tuentie tua yeiris: And in lyk maner, for airt and pairt of the ſteilling of ane blak horſe out of Argyle, in the moneth of Merche laſtbypaſt: And for thiftious ſteilling of ane ſcheip fra vmq^le^ Malcolme M^c^farlane, in Innerſnamet,[2] in the moneth of Julij, 1616 yeiris. ITEM, the ſaid *Johnne M^c^Innair M^c^farlane*, ffor airt and pairt of the ſteilling of ane broun kow furth of the landis of Glencroe, furth of ane grit number of vther ky, in dryveing thame to the Mercat, to be ſauld; committit a ſevin yeir ſyne, or thairby: And ffor airt and pairt of the ſteilling of ane blak kow, a four yeir ſyne, furth of the ſaidis landis of Glencroe. ITEM, the ſaid *Thomas Moir M^c^farlane*, ſone to Duncane Dow, ffor airt and pairt of the ſteilling of fyve ky, pertening to George Maidlanes in Letter, and vtheris, the Laird of Kilſythes tennentis: And ffor airt and pairt of the ſteilling of nyne lambes, furth of Craigcoſtane,[3] pertening to Patrik Glaſs M^c^farlane thair, in the moneth of Junij, 1623 yeiris: And ffor airt and pairt of the thiftious reſſetting of ane ſtowin kow, quhilk was ſtowin be Callum M^c^cauiſe in Clakbowie, fra Colene Campbell of Ardkinglas, in the moneth of November, 1622 yeiris: And ffor ane commoun ſoirner[4] and oppreſſour, vpone dyuerſe his Maieſteis ſubjectis: And for common Thift and Reſſet of thift. ITEM, the ſaidis *Allaſter Blair* in Bracherie, and *Johnne Blair*, his ſone, ffor airt and pairt of the ſteilling of foure ky, furth of the landis of Diſcher, in Menteith, a

[1] Goat. [2] Inversnaid? [3] Afterwards the residence of Rob Roy M^c^Gregor, who acquired this property in *anno* 1705. [4] One who oppressively takes free quarters, &c. by violence.

fyve yeir ſyne, or thairby, quhilk pertenit to . . . . Logane, ſervand to the Laird of Auchinbrek. Item, the ſaid *Allaſter*, ffor the ſteilling of tua oxin fra the Laird of Buchannane, furth of the landis of Salloche, a fyve yeir ſyne, or thairby. Item, the ſaidis *Allaſter*, and *Johnne Dow Blair*, his ſone, ffor the thiftious ſteilling of thre ky, furth of the landis of Drongie, pertening to Robert Campbell of Drongie, a foure yeir ſyne, or thairby: And forder, for the thiftious recept[1] of tua ſtowin horſe, ſtowin be the ſaid Robert Abroche, furth of the North pairtis of this realme, a yeir ſyne, or thairby. Item, the ſaid *Allaſter*, ffor the thiftious reſſetting of ane grit quantitie of the guidis and geir reft, ſtowin, and away-tane furth of Balwill, be Robert Abroche, Johnne M^c^cairtour, Donald Darleith, and vtheris thair complices, quhilkis pertenit to Johnne Fallaſdaill, bailzie of Dunbartane: And laſt, the ſaid *Johnne Blair*, ffor ſteilling of ane kow, furth of the landis of Cloſrak, pertening to Parlen M^c^neill, thair, a foure yeir ſyne, or thairby. Item, the ſaid *Johnne Gar M^c^gilliemichell*, ffor airt and pairt of the thiftious ſteilling, be way of Maiſterfull Thift and Stouth-reiff, furth of Murray, in the North, fra dyuerſe of the Inhabitantis thairof, in the moneth of Julij laſt, of ffyftie ffyve oxin and ky, with dyuerſe horſe, ſcheip, gait, inſicht and pleniſſing, quhilk war drewin[2] be the ſaid Johnne Gar, and be Robert Abroche, his maiſter, and vtheris thair complices, to the Waſt pairtis of this realme, quhair the ſamyn was ſauld and diſponit vpone to thair vſe: And ſiclyk, for ane commoun Soirner and Oppreſſour, in keiping daylie and nychtlie company with Robert Abroche M^c^gregour, and paſſing with him throw dyuerſe pairtis of the cuntrie, ſoirning and committing oppreſſioun vpone dyuerſe his Maieſteis ſubiectis, inhabitantis thairintill; forceing and compelling thame to furneiſe meit, drink, and vther prouiſioun, aganis thair will, and without payment of ony money for the ſame; in hie and manifeſt contempt of his Maieſteis auctoritie and lawis. Item, the ſaid *Duncane Bayne M^c^cartnay*, ffor ane commoun Soirner and Oppreſſour; ſpeciallie, for cuming to the duelling-hous of Neill M^c^claren in Innernandie, in the heid of Balquhidder, in May laſt, and thair forcet and compellit him to furneiſe to the ſaid Duncane, meit, drink, and vtheris neceſſaris; and becaus ane kid was refuiſet be the ſaid Neill to be ſlane and eittan, at the ſaid Duncanes deſyre, the ſaid Duncane thairupoun maiſt crewallie invaidit the ſaid Neill for his ſlauchter, gaif him ane crewall and deidlie wound in the heid, to the effuſioun of his bluid in grit quantitie; quha, be occaſioun of the ſaid ſtraik, being irritat with rage and furie, with ane grit caber[3] in his hand, rynnand at the ſaid Duncane in revenge thairof, ſtrak Donald M^c^Intyre (quha was ane redder[4]) in

[1] Reset. [2] Driven. [3] A large rafter, beam, or joist. [4] A peace-maker, who, in this instance, got the *redding-straik*, the proverbial recompense of those who, through their good nature, endeavour to separate angry combatants. The foregoing details afford a highly unfavourable picture of the state of society, in 'Rob Roy's country,' at the close of the reign of James VI.

the foirheid, and fellit and flew him thairwith; and fa, the faid Duncane was airt and pairt of the Slauchter of the faid vmq^le Donald McIntyre: ITEM, ffor cuming to the faid Neill M^cclarens hous, vnder nycht, and fteilling furth thairof of his haill inficht pleniffing, guidis, and geir, to the availl of fourtie pundis money.

The foirnamet haill perfones, dilaitit and accufet of the crymes *refpectiue* above writtin, haifing denyit the famyn to be of verritie, war put be the Juftice to the knawlege of the perfones following.

ASSISA.

Johnne M^cfarlane of Arrochar,
James Garbraithe in Garbell,
Dougall M^cfarlane in Tullichintaill,
Thomas M^cfarlane,
Johnne M^cfarlane in Kenmore,
Duncane M^cfarlane, thair,
Duncane McInnoyer in Gortane,
Patrik Roy McInnoyer,
Andro M^cfarlane in Drumfad,
Malcolme McWilliame in Downe,
Duncane M^cfarlane in Port-Chapell,
Johnne McInnoyer,
Parlane McCorrie in Ardleifch,
Patrik M^cfarlane in Pullochre,
Johnne Dow M^cfarlane,
Donald Dow M^cfarlane,
Harie Dow, feruitour to Johnne Erll of Mar, &c.

VERDICT. The Affyfe, all in ane voce, be the repoirt and declaratioun of the faid Andro M^cfarlane in Drumfad, chanceller, ffand the faidis perfones on pannell, and ilk ane of thame, to be ffylet, culpable, and convict of the feuerall crymes aboue writtin.—SENTENCE. To be tane to the Burrow-mure of the burgh of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveable guidis to be efcheit to his Maiefteis vfe, as giltie of the faidis crymes.

Sheep and Cattle Stealing, &c.

Jul. 21.—ADIE VSCHER, borne in Birkinhauch, in Liddifdaill, fervand to Robert Ellote of Reidheuche.

Dilaitit of airt and pairt of the fteilling of fex ky (*cattle*) furth of Schewingfcheill-Caftell, pertening to Williame Heroun of Chipchefe, in the moneth of November laft: ITEM, ffor airt and pairt of the fteilling of fextene gaitis (*goats*) furth of Emmetifhauch, pertening to Will Charletoun of Emmetifhaugh; Will Vfcher, his fone, being in cumpany with him at the fteilling thairof; committit in September laft: ITEM, ffor airt and pairt of the fteilling of tua ky furth of Hafilfyde, in Ingland, the ane blak, the vther broun, pertening to Williame Chairletoun of Hafilfyde; committit be him and the faid Will Vfcher, his fone, in October laft: ITEM, ffor airt and pairt of the fteilling of an yellow brandit ox, furth of the landis of Heifilefyde, in the faid moneth of October laft, pertening to the faid Will Chairletoun; the faid Will Vfcher, his fone, being in companie with him at the committing thairof: ITEM, ffor airt and pairt of the fteilling of fextene gaittis furth of the landis of Leipieleifche, in October laft; quhilk pertenit to Mathew Robfoun of Leipieleifche; the faid Will, his fone, being with him at the fteilling thairof: ITEM, ffor fteilling and away-taking, about Hallowmes laft, of tua fcheip

furth of Richartoun-fute, pertening to Archie Henderſoun, and Johnne Robieſoun, thair; committit be him and the ſaid Will, his ſone: Item, ffor airt and pairt of the ſteilling, furth of Burnemouth, of fyve ſcheip, pertening to Johnne Nixyne, thair; the ſaid Will Vſcher being at the ſteilling thairof: Last, ffor airt and pairt of the ſteilling of ffyve ſcheip, about St Thomas-Evin laſt, fra Johnne Ellote, callit *the Dod*, and Johnne Ellot, callit *the Gyde:* And ffor commoun Thift and Reſſet of Thift.

Perſewaris, Mr (Williame) Heroun of Chipcheſe, Will Chairletoun of Hiſlieſyde, Sir Williame Oliphant of Newtoun, kny^t^, Aduocat.

Assisa.

The Laird of Riddell,	Ragnell (Reginald?) Bennell,	Johnne Govane of Cardrono,
Williame Middlemeſt of Chapell,	The Laird of Mertoun,	James Douglas of Cowthroppill.
George Ker of Newhall,	Andro Ker of Brounlandis,	Patrik Cranſtoun of Corſbie,
Andro Douglas of Prieſtoun,	Wm Trumble of Phillopehauche,	Robert Edʒer of Wodderlie,
Williame Bennet,	James Nayſmyth of Poſſo,	Robert Lauder of that Ilk.

Verdict. The Aſſyſe, all in ane voce, in reſpect of the ſaid Adie his Judiciall Confeſſioun of the crymes foirſaidis to be of verritie, be the mouth of the ſaid Laird of Riddell, chanceller, ffand, pronuncet, and declairit the ſaid Adie Vſcher to be ffylet, culpable, and convict of the crymes foirſaidis.—Sentence. To be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill he be deid; and all his moveabill guidis to be eſcheit, &c.

Sheep and Cattle Stealing, &c.

Jul. 21.—Will Vscher, ſone to the ſaid Adie Vſcher.

Being preſentit vpone pannell, in preſens of my Lord Juſtice, Confeſſit him ſelff to be Giltie and culpable of the particular Thiftis contenit in his ffatheris convictioun: And offerit him ſelff in his Maieſtie and Counſallis will for the ſamyn.—Sentence. The Juſtice, in regaird of the ſaid Will Vſcher his minoritie, nocht being paſt ſaxtene yeiris of age, with advyſe of the Lordis of Secreit Counſall, ordanit the ſaid Will to be Baneiſchet his Maieſteis haill dominions, and nocht to be ffund thairintill in ony tyme cuming, without his Maieſteis Licence, vnder the pane of deid, &c.

[*Sir George Erſkine of Innerteill, kny^t^, Juſtice.*]

Murder under trust—Stouthreif—Piracy, &c.

Nov. 3.—Johnne Broun, ſkipper in Brunteilland; Robert Broun, mariner, his ſone, thair; Dauid Dowie, burges and awner thair; and Robert Duff, in South Quenis-fferrie.

Dilaitit and accuſet of airt and pairt of the ſchamefull, crewall, and vnmercieſull Murthour vnder truſt of thre Spaniſche mercheand young men; and ſteilling

and appropriating to thame ſelffis, be way of Maiſterfull Thift, Southe-reiff, and Peiracie, off the guidis and mercheandice being within thair ſchipis-boddome, pertening to the ſaidis Mercheandis; committit a thre yeir ſyne, or thairby, in thair cuming fra the Poirt of St Johnnes, in Spayne, to Calliſe, be caſting the ſaidis thre Spaniſche Mercheandis over-burde, and thaireftir appropriating of thair guidis and mercheandice to thame ſelffis, and making money thairof, to thair awin vſe.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

DITTAY *againſt the perſons on pannell.*

JOHNNE BROUN, ſkipper in Bruntieland, maiſter and owner of ane quarter of the ſchip vnderwritten, ROBERT BROUN, your ſone, awner of ane vther quarter thairof; DAUID DOWIE, mariner, burges of Bruntieland, awner of the half thairof; and ROBERT DUFF, indueller and mariner in South Queniſfferrie, YE ar indytit and accuſet, FORSAMEKILL AS the traffique and commerce betuix mercheand and mercheand, in expoirting of commoditeis frome ane cuntrie to ane vther, hes, in all weill-governet Kingdomes and Commoun welthis, bene eſtimat the ground and fundamentall caus, nocht only of grit welth and ritches to the inhabitantis, but alſo ane grit help and furtherance to intertene freindſchip and correſpondence betuix Princes; quhairthrow mony loveabill Lawis, vpone guid advyſe and deliberatioun, hes bene publeiſt and ſet furth be thame and thair eſtaitis, for advancement of thair tred, and reiking out of ſchipis and veſchellis for the better vphald and continuance thairof; and thairupoun, the art of Nauigatioun, with the perſones expert thairintill, alſweill for thair ſkill and dexteritie in failling, as fidelitie in that tred, be the ſaif convoying of the merchandis and paſſangeris, with thair merchandice and guidis, committit to thair truſt, hes becum famous and of goode eſtimatioun throw the haill world: LYK AS, the ſailleris of this Kingdome, being, for thair ſkill and fidelitie in that tred, nathing inferiour to ony vther cuntrie, people, or natioun, haif commonlie, in regaird thairof, bene ſa reſpectit be ſtrangeris in forayne pairtis, that thay, with thair ſchipis, hes bene preferrit in ſeruice to ony vther people quhatſumenir. Nochtwithſtanding quhairof, it is of verritie, that ye and ilk ane of yow, ſchaiking of all feir of the Omnipotent and Almychtie God, regaird to the ancient goode fame of this cuntrie and kingdome of Scotland, quhairof ye ar namet maiſt vnworthlie to be inhabitantis and natiue borne people; as alſo, to the grit obloquy, ſchame and reproche, and oppin diſcredeit of the haill ſailleris of this kingdome reſoirting to fforayne pairtis, prejudice and diſapointing of all lauchfull commerce and tred with ony of the Mercheandis of the ſamyn, and imployment of the haill ſeafairing men with thair ſchipis and barkis in tyme cuming, a thre yeir ſyne or thairby, ye being in St Johnnes, a Sie-poirt within the Kingdome and dominioun of Spayne, togidder with the ſchip callit . . . . . , quhairof ye, the ſaid Johnne Broun, was maiſter and awner of ane quarter, and ye, the ſaid Dauid Dowie, awner of ane half, and ye, the ſaid Robert Broun, awner of the fourt quarter; and being frauchted be ane Gilȝeane Thaſktone, a Spanȝaird, to pas fra the ſaid Poirt of St Johnes to the Poirt of Caillife, with ane laiding of Walnuttis, cheſtanis,[1] and certane Spaniſche irne; and accoirding thairto, haiſing tane in the ſaid laiding, togidder with thre Spaniſche young men, quha war directed be the ſaid Mercheand to await vpone the diſcharge of the ſaid Merchandice, and to make mony thairof at the ſaid ſchipis arryvell at hir appointit Poirt aboue writtin,[2] ye, befoir your cuming abuird of the ſaid ſchip in St Johnnes, plottit, contryvet, and devyſet the crewall and barbarous Murthour of the ſaidis thre ſtrangeris, and the appropriating to your ſelffis of the haill guidis and merchandice imput within the ſaid ſchip; and drew vp ane Band to that effect, quhairvnto ilk ane of yow, with the remanent equippage of the ſaid ſchip put to your handis; and thaireftir, cuming all aboird, heaſit vp ſaill, and paſt to the Sea: And being in the middis of Sea, far frae ony land, ye, vpone ſchamefuli and damnable greid and covetouſnes, vpone ſet

[1] Chestnuts. [2] As supercargoes.

purpois, deliberatioun, and ffoirthocht ffellony, fulifchilie apprehending that the al-feing eie of the Almychtie did nocht luik doun, nor wald bring to licht your maift horrible and deteftable Murthour and Pirracie, ye being alfo fecundit, aidit, and affiftit be James Hall in Kirkculdbrycht, Johnne Gibfoun in the Erles-fferrie, James Carrane in Tradache, in Ireland, Robert Kincavill, cuik of the fchip, with ane Irifche boy, namet Thomas Cur; all of yow, being nyne in number, within fchip-buird, ye maift crewallie and vnnaturallie, aganis the Lawis of Nationes, haifing the faidis thre ftrangeris in your power, and for the vnlauchfull acquyreing and appropriating to your felffis of the faidis guidis and mercbandice, violentlie, and but[1] pitie or commiferatioun, threw them all thre ouerbuird, ane eftir vther, in the rageing feas; and thairby crewallie and vnmerciefullie, vnder truft, credeit, and affureance, Murdreift and bereft thame of thair naturall lyves; thay haifing na refudge nor bak-dur to efchew your crewaltie: Quhilk being done, ye, in plane mokage[2] and fkorne of the Almychtie, as gif his devyne Maieftie had approvin that your horrible fact, maid ane Prayer, and fang vp ane Pfalme: And thaireftir, as Thevis and maifterfull Sea-robberis, divertit your curfe fra Callife,[3] and paft with your faid fchip and laiding thairof to Myddilburgh in Zeilland, quhair the faidis walnuttis and cheftanes war fauld and maid money of, be ane or vther of yow, in name and to the behuif of the haill company and equippage;[4] and the famyn money, thaireftir, was pairtit amangis yow: Lyk as, the irne was brocht hame to Brvntieland, quhair the famyn was fauld, for reddie money.—Committing thairby maift horrible Murthour and Slauchter vnder truft and credeit, the faidis thre ftrangeris being vnder your power and command, within your fchip; and lykwayis Maifterfull Thift, Stouthe-reiff and Pirracie, in appropriating of thair guidis and mercheandice to your felffis: Off the quhilkis, ye, and ilk ane of yow, ar and war fpeciall actouris, airt and pairt; and thairfoir, aucht and fould, in maift exemplarie maner, be pwneift, to the terrour of vtheris.

My lord Aduocat, eftir reiding of the Dittay, and the pannellis accufatioun of the faidis crymes, at length fet doun thairintill; and that in refpect na obiectioun was maid be the pannell or ony vtheris in thair names, aganis the relevancie thairof, defyret my lord Juftice to put the famyn to the tryell of ane Affyfe of the perfones fummond to that effect.

My lord Aduocat takis inftrumentis of the fweiring and admiffioun of the Affyfe, and that na obiectioun is maid aganis thame be the pannell. And for Verificatioun of the poyntis of Dittay and crymes thairin mentionet, producet the Depofitioun maid be the foure perfones on pannell, viz. the faid Johnne Broun, Robert Broun, and Dauid Doweis Depofitiones, maid be thame in prefens of the Laird of Bombie, the Commiffar of Kirkculdbrycht, and the Bailleis thairof, vpone the xxviij day of Auguft laft, confeffing the Murthour and thiftious taking and appropriating of the guidis and mercheandice to thame felffis. Togidder with the faid Johnne Broun and Dauid Doweis Depofitioun, tane in prefence of the Erle of Melrois, vpone the xv of September laft. Produces alfo the Depofitiones of Robert Duff, tane in prefens of the faid Erle of Melrois, on the vij day October laft, beirand the faid Johnne Broun, and Dauid Dowie, to be cafters of the firft Mercheand overburd. Produces the pannellis haill Depofitiones maid be thame in prefens of my Lord of Melrois, vpone the nynt day of October laft. Togidder with the Depofitioun of Robert Kincavill, cuik of the fchip, and ane of

[1] Without. [2] Mockery. [3] Calais. [4] Crew.

the equippage thairof in that veadge,[1] tane in prefens of James Weymes of Bogy, Vice-Admirall at Kirkcaldie, vpone the 28 of Junij laft. With the Depofitioun of the faid Robert Duff, maid in prefens of my lord Aduocat him felff, vpone the 27 of October laft. And laft, vfes and produces the Declaratioun of Robert Meluill and Robert Cellok, vnder thair hand-writt and mark put thairto, detecting and oppening vp the pannellis giltienes of the haill poyntis contenit in thair Indytement. And vpone the productioun of the verificationes aboue writtin, afkit inftrumentis: And proteftit for Wilfull-Errour aganis the perfones of Affyfe, gif thay acquit the pannell of the deteftable crymes aboue written.

VERDICT. The Affyfe, all in ane voce, be the repoirt and declaratioun of Stewin Philp, elder, mercheand in Dyfert, chanceller, ffand, pronuncet, and declairit the haill foure perfones on pannell to be Giltie, culpable, and convict of the crymes above fpecifeit.—SENTENCE. To be tane to the Mercat-Croce of Edinburgh, and thair to be Hangit vpone ane gibbet, quhill thay be deid: And thaireftir, thair heidis to be ftrukin fra thair bodeyis: And tua of them to be fet vp vpone prikis of irne at *Leith;* and the vther tua to be fent to *Brunteil-land*, to be fet vp vpone prikis thair: And thair haill moveabill guidis to be efcheit to his Maiefteis vfe.

[*Mr Alexander Coluile, Juftice-Depute.*]

Murder, &c.

Nov. 13.—HARIE LISTOUN, indueller in the bak of Plefance (of Edinburgh), callit the Bak-Raw.

Dilaitit, fforfamekill as the faid Harie, haifing, without ony juft caus, confauet ane deidlie haitrent and evill will againft vmq^le^ James Mayne, feruitour to Robirt Young, maltman, burges of Edinburghe, with ane fettillit purpois and refolutioun to bareiff him of his lyffe, be on meine or vther; laitlie, vpone the laft day of Auguft laftbypaft, come in the twielicht, eftir fetting of the fone, betuix fevin and aucht houris at evin or thairby, to the faid Robert Young, his peife-land, befyde the Seanis,[2] near to the Burrow-mure of the faid burgh, quhair the faid vmq^le^ James was in fober and quyet maner for the tyme, keiping his faid maifteris peife, and vtheris his coirnes, than growand and ftanding ftoukit[3] vpone the ground of the faidis landis; and thair, the faid Harie, being bodin with ane grit rung or battone in his hand, and with knyves and vtheris invafiue wappones, firft vpbraidit the faid James Mayne with woirdis, alledging that he was ane commoun Theiff, and had ftowin ane grit number of the faid Harie his beanes and peife, growand neir to the faid Robert Youngis land, and lyand contigue

[1] One of the crew in that voyage. [2] Sciennes, so called from a religious house dedicated to St Katherine of Sienna, in the immediate vicinity of Edinburgh. [3] Cut down and put up in *stouks*, ricks, or shocks.

thairto; and thaireftir, becaus the ſaid James purget him ſelff of that calumnie, and anſuerit him, be woird, that he was als honeſt as him ſelff; the ſaid Harie, thairupoun, ran vpone the ſaid James, and rwſchet him (being ane aget man of threſcoir fourtene yeiris of age) to the grund, dang him in the heid, craig,[1] ſchoulderis, and ſydis with the ſaid battoun, lap vpone his breiſt and bellie with his feit and kneyis, punchet him as alſo vpone the heart, and thairby brak and birſet his intrallis and noble pairtis; in maiſt inſolent maner cuttit his cleithing in peices with knyves, and thaireftir harrellit and drew him be the heillis the ſpace of ane quarter of ane myle af the ſaidis landis, to ane laich volt in St Geillie Grange, and impriſſonet him thairintill, *tanquam in privato carcere*, he being in the deid-thraw:[2] Lyk as, within thre houris efter his imputing within the ſaid volt, he deceiſſit of the ſaidis ſtraikis: And the ſaid Harie, vnderſtanding of his daith, to ſuppres the Murthour of the ſaid puir man fra the warld, cauſit him to be bureit ſecreitlie in the nycht, in ane obſcure place. And ſa, the ſaid vmq^le^ James Mayne was ſchamefullie, crewallie, and barbaruſlie Murthouret, and thairefter ſecreitlie bureit, be the ſaid Harie and his complices; and he is airt and pairt thairof; committit vpone ſet purpois, prouiſioun, and foirthocht fellony.

Persewaris.

Jonet Watſoun, the relict; Euphame Cuninghame, ſiſter-dochter;[3] Sir Williame Oliphant, knycht; Robert Young, as maiſter.

Prelocutouris in defence.

The Laird of Innerleyth, The Laird of Lugtoun, Mr Lueis Stewart, and Mr Johune Oliphant, Aduocatis.

It is allegit be the pannell, and be Mr Lueis Stewart, his prelocutour, eftir reiding of the Dittay, that the ſamyn is nawayis relevant to pas to the knawlege of ane Aſſyſe, as it is ſett doun; nawayis affirmeing thairin, that the pannell was the actuall committer of the ſlauchter lybellit; and ſua, nocht concludand, *de homine occiſo*, the ſamyn can nocht pas to ane Aſſyſe.—It is anſuerit be my lord Aduocat, the allegeance aucht to be repellit, in reſpect of the Dittay beir-and *per expreſſum*, that the defunct reſſauit dyuerſe ſtraikis with ane battoun in the heid, and was punchet in the breiſt and bellie, and his hail noble pairtis brokin within him; and be occaſioun thairof the defunct deceiſſit; quhilk was gevin to him be the pannell, and that he deceiſſit off the ſamyn ſtraikis gevin to him be the pannell, the tyme lybellit.

It is allegit, that the Dittay contenis dyuerſe and ſeuerall[4] memberis, ilk member thairof being ane cryme be the ſelff, viz. ffirſt, that the defunct was ſtrukin with a battoun: 2. His claithis cuttit with knyves: 3. The defunct was harrellit be the heillis af the landis lybellit, to the Grange: 4. Was caſſin in ane laiche volt, *tanquam in privato carcere*, quhairin he was detenit captiue and priſſoner; quhairin, it is affirmet, that the defunct deceiſſit: Quhilkis, being ſeuerall crymes,

[1] Throat; neck [2] Half dead; in the *throes*, or agonies, of death. [3] Niece. [4] Separate.

man (*must*) be diſcuſſit ſeuerallie. The Aduocat declairis that he conjoynes the haill crymes togidder, and devydis na pairt of the Dittay; and ſayis, that the ſamyn is verrie relevant, as it is ſet doun, to pas to the knawlege of ane Aſſyſe.

It is allegit be the pannell, that the ſamyn can nocht pas to ane Aſſyſe, becaus he offeris him to prove, be ſufficient Witneſſes preſent at the bar, that the ſaid James Mayne deceiſſit be hanging himſelff within ane laiche volt in the Grange, eftir he was committit thairin for ſteilling of certane beanis and peiſe, and eftir he had remanit thairin the ſpace of tua or thre houris; quha was brocht thairto, frie of ony hurt or woundis, in ony pairt of his body.—It is anſuerit, aucht to be repellit, in reſpect the allegeance conſiſting *in facto*; and gif ony probatioun be tane, it man be proponit to the Aſſyſe, quha, for thair informatioun, may tak the Witneſſes declaratioun, gif thay ſall think it expedient, or reject the ſamyn.[1]

THE JUSTICE Ordanis the Dittay to pas to the knawlege of ane Aſſyſe: And the exceptioun proponit be the pannell, anent the defunctis putting handis in him ſelff, ſeing it conſiſtis *in facto*, REMITTIS THE TRYELL THAIROF TO THE ASSYSE; AND THE PROBATIOUN TO BE VSET BEFOIR THAME.

ASSISA.

Mr Johnne Cant of the Grange,	Johnne Stevinſoun, maltman,	Robert Wilſoun, beltmaker,
Johnne Marſchell, burges of Edr,	Johnne Lowrie, maltman,	James Johnneſtoun, maltman,
Adame Marſchell, maltman thair,	Adame Bar, tailȝeour,	Frances Stevinſoun, chirurgane,
Johnne Campbell, ſtaibler thair,	Robert Moubray, ſuordſlipper,	Johnne Fluiker, chirurgane,
Johnne Bordland, litſter,	Johnne Ahannay, baxter,	Johnne Clarkſoun, ſmyth.

It is allegit be the pannell aganis ffrances Stevinſoun and Johnne ffluiker, chirurganes, that nather of thame can be admittit vponc this Aſſyſe, becaus thay haif behavet thame ſelffis as pairteis, in paſſing, at the deſyre of the perſewaris, and for guid deid gevin to thame, to the defunctis graiff, ſevin dayis eftir his buriall, and taking him vp and ſichting the deid corpis, ffor ane pre-

[1] This Case is most important, as being the first on Record, where the Lord Advocate voluntarily admits of WITNESSES being examined before THE ASSISE, in relation to facts arising out of the assertions contained in the Dittay. The practice formerly was for the Advocate, as public prosecutor, previous to framing the Dittay, to examine the pannell and such witnesses as could be obtained, immediately after the commission of the crime, before the Lords of Privy Council, or a Commissioner; and the Declarations, Confessions, and other evidence so produced, were founded upon in Court. They were there held as conclusive, and not liable to be redargued by leading of fresh evidence at the time of the Trial. The want of attention to this circumstance, or rather the ignorance of the ancient mode of procedure in matters Criminal, would induce any one, at first sight, to form a very erroneous estimate of the policy, and more particularly of the administration of our Laws. The notion seems anciently to have been, that it was an act of flagrant contempt in a pannel to dispute the validity of the evidence led before so high a tribunal as that of the Privy Council, and probably in the face of his own repeated Confessions or Declarations, on being examined, previous to trial. The Justice, therefore, repelled any attempt on the part of Counsel for the pannel bringing forward Witnesses in proof of his innocence; until, at length, the voice of the country prevailed, and THE ASSISE WERE MADE JUDGES OF THE LAW AS WELL AS OF THE FACT. It is not a little singular to observe here, that one of the Assise (the very Justice of the Peace in the vault of whose house the alleged suicide took place, and who was afterwards chosen Chancellor of the Assise) is brought forward as the principal evidence, along with three of his servants!

cognitioun in fauouris of this perſewar, anent the tryell of this mater.—It is anſuerit be the Aduocat, the allegeance is nawayis relevant to ſtay thame to be admittit vpone this Aſſyſe; becaus, quhatevir was done be thame in raiſeing and ſichting of the corpis, was done be command of the Bailleis of Edinburghe.

Robert Young, perſewar, being ſuorne, gif he has juſt cauſe to perſew this Dittay as it is ſett doun, declairit, that he has juſt caus to perſew, vpone this reaſone only, becaus he, haiſing gottin knawlege of James Maynes daith, and cuming to the Grange to vnderſtand the forme thairof, and haiſing ſeane the deid corpis, deſyret Mr Johnne Cant to keip him vnbureit quhill the morne at nyne houris, that his wyfe and freindis (micht) come to ſie him; quhilk the ſaid Mr Johnne promeiſt ſould be done; and nochtwithſtanding thairof, he was bureit, be the pannellis ſervandis, lang befoir ſex houris in the moirning: And thairfoir, in reſpect of his buriall, ſecreitly, by[1] promeis, he had juſt caus to perſew the pannell, as giltie of the ſaid James Maynes daithe.

The Aduocat takis inſtrumentis of the ſueiring of the Aſſyſe, and of the productioun of the defunctis claithes be the relict, all cuttit be the pannell, the tyme contenit in the Dittay: And proteſtis, in caice thay acquit, for Wilfull Errour. —The pannell proteſtis in the contrair, gif thay ffyle; and that the Witneſſes may be tryit for preving that the only cauſe of the defunct his daithe proceidit fra his putting violent handis in his awin perſone, be his feirfull and crewall hanging him ſelf, and thairby devoiring him ſelff to daith, within ane laich volt of the Grange, pertening to Mr Johnne Cant, ane of the Aſſyſe, eftir the pannell had apprehendit him in his peiſe, and tane him with tua grit wallat-full of ſcheillit beanis, ſtowin be him af his peiſe-rig, and brocht him to the ſaid Mr Johnne Cant, as Juſtice of Peace, to haif remanit with him vnto the tyme he had bene tryit and pwneiſt for the ſaid Thift. And for cleiring of the veritie of the foirſaid allegeance to the ſaid Aſſyſe, deſyret the Witneſſes following, all preſent at the bar, viz. the ſaid Mr Johnne Cant, ane of the Aſſyſe; Robert Stark, James Scott, and James Wallace, his thre ſervandis; James Borthuik, indueller in Edinburghe; James McCorne, in the Seanis; Williame Mure, ſervand to Robert Ȝoung, ane of the perſewaris, and Johnne Girdwoid, alſo his ſervand, to be callit vpone and examinat be the ſaid Aſſyſouris, eftir thair inclouſeing.[2]

Verdict. The ſaidis perſones of Aſſyſe thaireftir removet altogidder furth of Court to the Aſſyſe-houſe, quhair, be pluralitie of voittis, thay electit and chuiſet the ſaid Mr Johnne Cant in chanceller: And thaireftir, the ſaidis haill

[1] Contrary to. [2] This seems an extraordinary step. The Assise, *after they are enclosed* in the Assise-house, call before them and examine the Witnesses offered, without the direction of the Judge, or the interrogation of Counsel for either party.

WITNESSES being ſuorne and examinat be thame, thay all, but[1] difcrepance, cleirlie verifeit be thair declarationes, that the ſaid James Mayne come vpone his feit, without ony hurt, as appeirit, in ony pairt of his body, to the Grange, a littill afoir ſex houris at evin, the day contenit in the Dittay, being brocht thairto be the pannell, for the cauſe contenit in his exceptioun; and being put in the laich volt, at the deſyre of the pannell, to be keipit thairin be the ſaid Mr Johnne Cant, as Juſtice of Peace, vnto the tyme he war tryit, and that Robert Young, his maſter, war brocht to that effect; he, within tua houris thaireftir, the volt dur being lokit vpone him, was fund hingand in tua horſe girthes or coirdes, deid, and his mouth fameand;[2] and thairby, that he had devoiret[3] him ſelff. Eftir quhais tryell and examinatioun, the ſaidis perſonis of Aſſyſe reſſonit and voittit vpone the poyntis of the ſaid Dittay, and being ryplie and at lenth advyſet thairwith, togidder with the DEPOSITIONES aboue writtin, maid be the ſaidis WITNESSES, thay re-enterit agane in court, quhair thay all, in ane voce, be the repoirt and declaratioun of the ſaid Mr Johnne Cant, chanceller, ffand, pronuncet, and declairit the ſaid Harie Liftoun to be Cleane, innocent, and acquit of the ſlauchter and murthour of the ſaid James Mayne; and of airt and pairt thairof.

Quhairvpoun the ſaid Harie Liftoun and his prelocutouris aſkit inſtrumentis.

Incest.

Nov. 19.—JAFFRAY IRWING of Robgill.

Dilaitit of the filthie and deteſtable cryme of Inceſt; committit be him with Agnes Cairletoun, ſpous to vmq^le George Irwing of Bonſchaw, his brotheris wyfe; quha buir to him, in that filthie copulatioun, thre ſones, namet Frances, George, and Edward Irwingis, and ane dochter; quhilkis war all baptizet in Ingland; contrair the tennour of the Actis of Parliament.

My lord Aduocat takis inſtrumentis of the pannellis Confeſſioun; and proteſtis for Wilfull Errour, gif thay acquit.

VERDICT. The Aſſyſe, all in ane voce, in reſpect of the ſaid Jaffra his Judiciall Confeſſioun, ffand, pronuncet, and declairit, be the repoirt and declaratioun of Raulff Ker, burges of Lauder, chanceller, the ſaid Jaffra to be ffylet, culpable, and convict of the ſaid cryme of Inceſt, contenit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburghe, and thair his heid to be ſtrukin from his body; and all his moveabill guidis to be eſcheit, &c.

[1] Without difference in their testimony. [2] Foaming, or frothing. [3] Destroyed. Lat. *devorare.*

GENERAL APPENDIX.

APPENDIX.

*** SINCE the preceding Volumes were sent to Press, various important PAPERS having been discovered by the Editor, illustrative of facts narrated in the Trials, it has been thought proper to preserve a selection from them in this APPENDIX.

No. I.

PAPERS RELATIVE TO THE DEADLY FEUD BETWEEN THE EARLS OF EGLINTON AND GLENCAIRN, &c.

I. LETTER, *the King to the Privy Council, 'for tryall of the authouris of the Conflict betuix Erle of Glencairne and the Maifter of Wintoun, at St Johnefloun.'*[1] *Anguft* 6, 1606.

RICHT truftie and welbelouit Coufins and Counfelloris, We greet 3ow well. The report of that broyle whiche did fall furth in THE TOUN OF PERTH, betuix THE ERLL OF GLENNCAIRNE and THE MAISTER OF WINTOUN, immediatlie befoir the laft feffioun of Parliament keipit thair, did offend ws muche; fpeciallie, in refpect of þe circumftances of þe tyme and place, quhen as, (befide the greit hazard in bringing many of THE NOBILITIE then prefent in the toun, to have enterit in blood with vþeris, and thairby to haue revived that new mortified monftres of DEIDLIE FEED,) it wes a reddie way to haue ftayit the progres of þat feffioun of Parliament, to þe greit preiudice and hurt of þe Eftait, and to þe hinderances of all our fervices thair. Quhairvponn, We ar moved the moir erneftlie to defire the knawledge of þe beginning of þe mifdemeanour, and quhairvponn the famin proceidit, and whiche pairtie wes firft author thairof. And thairfoir, have thocht meet, heirby, to will 3ow to tak particuler tryell befoir 3ow of þe firft beginning of that truble, how the famin fell furth, and whiche of the tuo pairteis began the invafioun; and thairwith to try, whidder it wes vpoun a precogitat or foir-thocht intentioun, or if þe fame fell furthe be mere accident, or *chaud mêle*, vnintendit be ony of the tuo pairteis againft the vþer? And heirof, willing 3ow to certifie ws, particularlie, of the whole treuth of that matter, in all the circumftances of the famin, oure plefour is, that, in the mein tyme, fpecialle directioun be gevin be 3ow to OUR JUSTICE GENERALL, HEICHE CONSTABLE, or thair deputies, or to ony vþer Judges appointed by Commiffioun to proceid criminallie in the tryall of that matter, to

[1] From *MS. Collection of State Papers*, by Sir Thomas Hamilton, afterwards Earl of Melrose and Haddington.

defert all dayis, and to fufpend and continew all proceffes intendit befoir thame be ony of thefe pairteis againft vper, ay and quhill our forder plefour be fignifieit vnto thame, efter We haue dewlie confidderit the tryall taikin be 3ow in that matter. And fo We bid 3ow richt hairtlie fairwell. FROM our Manowr of GREINWICHE, þe 6 of Auguft, 1606. [JAMES R.]

To our truftie and welbelouit coufins and counfellouris, THE ERLL OF DUMFERMLING, our Chancellour, and remanent Lordis and vperis of our COUNSALL OF ESTAIT, in oure kingdome of Scotland.

II. LETTER, *the Privy Council to the King, as to Deadly Feud between the Earls of Eglinton and Glencairn, and Lord Sempill, &c.*[1] *Aug.* 27, 1606.

MOST SACRED SOUERANE,

ACCORDING to 3our hienes directioun, fignified vnto ws by 3our MATEIS faithfull counfellour THE ERLL OF DUMBAR, we did call and convene befoir the Counfell the ERLLIS EGLINTOUN and GLENCAIRNE, and THE LORD SEMPILL, with a nwmer of thair freindis, whome we knew to haue cheifeft interes in the prefent FEED ftanding betuix thame, and efter that we had declairit vnto thame the greit paines and travellis whiche 3our facred MAIESTIE took in 3our awin perfone, for extinguifcheing of the name and memorie of DEIDLIE FEEDIS, what good fucces had followed vpoun 3our MAIESTIES travellis, in fum of the greitteft FEEDIS of this kingdome, and how that 3our MATIE had now recommendit vnto THE COUNSELL the removing this FEED, whiche hes bene of fo long continwance, and be reffoun of þe minoritie of THE ERLL OF EGLINTOUN could not whill now tak effect, we burdinit thame with a Submiffioun, conforme to the Act of Parliament. The ERLL OF GLENCAIRNE pretendit that thair wes a quarrell betuix him and EGLINTOUN, and that a Submiffioun wes vnneceffar; and, in end, he directlie refuifit to fubmitt, becaus the Submiffioun imported aganis him of the Slauchter of vmqle THE ERLL OF EGLINTOUN, which he wald never tak vpoun him; bot offeris him reddy to tak tryall of the lawis for that Slauchter; whiche tryall, in his pairt, aucht to preceid the Submiffioun. We rememberit him of ane Submiffioun fubfcryvit be himfelff in this fam matter, aggreable, in evrie word, to that whiche wes now defirit when this matter wes laft in handis afoir THE COUNSELL, in Februar 1604. Bot he, ftanding vpoun his innocencie of that Slauchter, refuifit to fubmitt. EGLINTOUN maid no refuifall, bot pretending fome excufe vpoun the fchortnes of the wairning, he only craved a continuationn to be advifit with his freindis, becaus this wes the firft tyme that ever he wes chairgit in this matter, for his MAIESTIE; and THE LORD SEMPILL verry frelie, for 3our MATIES fatisfactioun and obedience, without ony ceremonie, offerit to fubmitt. We have grauntit vnto EGLINTOUN, with his awin confent, the 20 day of November nixt, to be advyfit with his freindis, and to come prouydit in this matter. We have no affurance of THE ERLL OF GLENCAIRNES obedience, bot we hope that he will conforme himfelff to 3our MATIES plefour: And THE LORD SEMPILL will be obedient.

We had lykwayis in hand the proces of GLASGOW, whairin we haue fund verrye greit infolence and ryatt committit be MYNTO and a number of the commonis of the toun; and hes committit the perfounes guiltie to waird within the burghe of Linlithgow, whill 3our MATIES plefour be knawin.

This is all we haue done at this meiting, wherof we haue thocht meet to mak 3our facred MATIE acquainted; to the effect 3our hienes may give directioun thairin, as 3our MATIE fall think good; which we fall profequute and follow out. And fua, praying God to blifs 3our facred MAIESTIE with a long, happy, and profperous reignne, We reft

3our Maties maift humble and obedient fubiectis and fervandis.[2]

LYNLITHGOW, 27 of Auguft, 1606.

[1] From the same *MS. Coll.* as the preceding.

[2] The subscriptions have not been transcribed by *Sir Thomas Hamilton*, in his transcript.

No. II.

Societie and Companie of the Boyes.

Letter *from the Privy Council to the Marquis of Huntly.*[1] *Jan.* 20, 1607.

Efter our verry hairtty commendationis to ȝour good lordſchipis, We ar informed of a verry greit inſolencye begvn and lyk to grow to a greiter heicht within the boundis of ȝour ll. office be Johnne Gordoun, *callit of Geyche*, ... Forbes *of Corſindae*, Patrik M^c^Inneir, and ſum vþeris, quho, having aſſociat vnto thame ſeluis ane number of dobofchet and lawles lymmerris, calling thame ſeluis Ye Societie and company of Boyes, thay haue moſt vnlaufullie and ſeditiouſlie bund thame ſeluis in ane fellowſchip, with aithis, vowis, and proteſtationis of mutuall defence and perſute; and þat euery one of þair quarrellis ſalbe comoun to all; and that the purpoſe and interpryſe of ony one of thame ſalbe proſequuted, bakkit, and followed out, be the hale Societie, againſt all and quhatſumeuir, without reſpect of perſouns. Lykas, thir ſame lymmaris keipis thame ſelffis togidder, committing oppin and avowed reiffis, heir-ſchippis, and vþeris enormities, in all pairtis, quhair thay may be maiſteris and commaunderis. Quhilk proud and deteſtable attempt, as it is odious to be hard of in a peceable eſtait, ſubiect to a Prince whome God hes airmit with power and force able to ſuppres the ſame; ſo the ſame caryes with it no lyttill ſclander and preiudice to your ll. honour and creddit, that within ȝour boundis, quhair ȝour ll. may commaund, ſuch ane handfull of lymmaris dar preſume to attempt ſuche interpryſes; and We ar certane þat the knowledge heirof being broght to his Matie, will mak his hienes wonderfullie till admeir ȝour ll. long patience and connivance, in not apprehending, puniſcheing, and ſuppreſſing of thir lymmaris; and quhat conſtructionis may be maid heirvpoune to his Matie againſt ȝour ll., we remitt to ȝour ll. conſideratioun. Alwayes,[2] we ar heirby to requeiſt and deſire ȝour ll. that, with all convenient ſpeed, ȝow tak ordour for apprehending of the ſaidis perſones, and ſome vþeris the Chyftanes of that laules Societie, and put thame heir befoir the Counsell; and that ȝour ll. proſequute *with fyre and ſword* the haill reſt of thair followaris, and never leue of þe perſute of thame whill they be apprehendit, pvniſt, and altogidder ſuppreſt; as ȝow reſpect his Maties ſeruice, the peace of þe cuntry, and ȝour awin credite, honour, and reputatioun, and as ȝour ll. wald eſchew that hard cenſure and conſtructioun which his Matie man[3] mak of ȝour behaviour, in this point. Sua we commit ȝow to God. From Edinburghe, þe 20 of Januar, 1607.

To our verry honourable good Lord, the Marquise of Huntly.[4]

No. III.

Trial of the Mures of Auchindrane.[5]

Letter, *the Earl of Caſſillis to the King.*[6] *Dec.* 3, 1608.

Maist sacred Souerane,

It may pleis ȝour gracious Matie, I haue taikin this bauldnes, vpone the farder tryall of the

[1] From *Haddington's MS. Coll.* [2] Nevertheless; at all events. [3] Must. [4] A Letter from the Privy Council, 9th Feb. 1608, directs him, by his Majesty's command, between and Mar. 10 next, to prepare to depart out of the kingdom; and to give assurance for discharge of his offices, during his absence. [5] See this Collection, III. 124, &c. [6] From *Denmylne MSS.* Adv. Library.

trechrous MURTHOURIS of my vncle THE LAIRD OF CULZEAINE, and of the boy[1] quha careit the Lettir of his dyett, committet be THE LAIRD OF AUCHINDRAINE and his fonne; and now farder cleirit, be the greit paine and cayr of MY LORD CHANCELARE, quha hes broicht them to fik contrarietie in thair DEPOSITIONIS, that all indifferent men may be perfwadit off thair guyltines of bayth thais Murthouris. Nochtwithftanding quhairof, thai ftill continew in ane denyall. I wald maift humelie befeik 3our MA^TIE that it micht be 3our MA^TEIS gracious plefoure to graunt ane WARRAND to THE CHANCELLER and COUNSALL OF SCOTLAND to PUTT thame to YE BUITTIS,[2] quhairthrow thai may be broicht to þe mair evident Confeffioun. So, maift hartlie vyffing 3our MA^TEIS lang profperitie and happinefs for euer, I remane,

3our MA. maift humbill feruant and fubiect,

EDINBURGHE, the thrid of December, 1608. CASSILLIS.

TO THE KING his maift excellent MAIESTIE.

No. IV.

PAPERS IN FARTHER ILLUSTRATION OF THE TRIAL OF MR THOMAS ROSS.

(*See Vol. III., p.* 445.)

[THE circumstances attending the Case of MR THOMAS ROSS are so very remarkable in their nature, that it was deemed proper to institute a still more rigorous search after the grounds and Warrants upon which his almost unexampled Trial was founded. After having carefully examined the Acts of the Privy Council, and many other authentic sources, the Editor has the satisfaction of having at length discovered the identical copy of his Trial, which had been transmitted to Court, for the information of KING JAMES VI. Besides the proceedings which have already been printed, it contains a translation of the offensive THESIS and ANNEXA, which, as has already been seen, were ordered to be taken up by the public prosecutor, and upon no account to enter the Records. Annexed to it are the DEPOSITIONS of the unhappy man, which, in expectation of a free pardon, he voluntarily emitted before the Privy Council of Scotland. The original draught of the KING's Letter to the Secret Council, to bring him to Trial and execution; and, in compliance with the King's known wish, their cruel recommendation, that ROSS should suffer an ignominious death, have also been obtained. These interesting documents were found in a Volume of *Sir James Balfour's* invaluable *MS. Collections*, in the Advocates' Library, which had accidentally been mislaid when the Editor conducted the former enquiry.

The reader has here the painful satisfaction of finding, that the conduct of KING JAMES and his COUNCILLORS was still more inexcusable than had at first been conjectured. It is now clearly proved, beyond the shadow of a doubt, that the PASQUILL, or THESIS in question, had not been *printed* or industriously *disseminated* by its unhappy author; but that it had merely been affixed on the door of the College,—that, *de facto, no person had read it*, excepting the Vice-Chancellor of Oxford, to whom it had been brought by a student,—that this student, instantly on the Thesis having been hung up, had only perused a few lines of the Paper, and brought it, without delay, to his superior,—and that, after the examination, confession, and imprisonment of ROSS, the Vice-Chancellor had transmitted the THESIS to Court, requesting instructions how the poor man should be disposed of.

[1] William Dalrymple. [2] The torture of the boots. The younger Auchindrane was put to the torture, which he bore with remarkable fortitude.

That ROSS was *insane*, as well as in the most abject poverty, there can now be no doubt. Altogether, indeed, his Case is one of the most pitiable on record.

It only remains to the Editor to state, that he is indebted to GEORGE SMYTHE, Esquire, Advocate, for the following authentic information, regarding THE FAMILY OF ROSS of Craigie, at and shortly previous to the period of Mr Thomas Ross's execution, Sep. 10, 1618. Such additional notices and evidence as have fallen under the Editor's observation are inserted in the foot-notes, along with the verifications of Mr Smythe's memoranda.

'I. JOHN ROSS OF CRAIGIE appears to have been the father of (1.) *John Ross* of Craigie. (2.) *James Ross of Creytoun*, who acquired certain lands at the East end of Forgundenny from Walter Oliphant of Newton, in Feb. 1539.[1] He married *Marjory Stewart;* by whom he left a daughter, *Janet*,[2] who married Patrick Lyndfay of Dowhill.[3] (3.) *Thomas Ross of Maitlands*, who was killed at the battle of Pinkie.[4] *Grissell Duncanson*, his relict, afterwards married Alexander Crighton of Forgound.[5] His son, *James*, was killed in an affray with the Oliphants, Nov. 12, 1571.[6]

'II. JOHN ROSS OF CRAIGIE was infeft in the Lands of Hilton Malar, Sep. 17, 1539.[7] He was served Tutor-at-law to *Janet Ross*, his niece, Mar. 17, 1543.[8] He is mentioned by KNOX, in his History of the Reformation,[9] along with "the penfionars of the Prelates, Oliver Sinclair, and utheris, who were faithful to them in all things," and informed them of all proceedings at Court. He married *Isobel Liddell*,[10] who had previously borne a number of children to Patrick Hepburn, Bishop of Moray, so notorious for his gallantries. He was killed at Pinkie, and left four sons and three daughters.[11] (1.) *Thomas.* (2.) *John.* (3.) *James*, who had a Charter of the Lands of Pitheveles to him and *Catharine M'gie*, relict of umq^le^ Alexander Menzies of that Ilk, his spous, Apr. 7, 1566.[12] He afterwards married *Janet Robertson*, relict of umq^le^ Thomas Fowlis, burges of Perth.[13] He left no issue; for his brother, *John*, was served heir to him, Nov. 3, 1582.[14] (4.) *William.* (5.) *Barbara.* (6.) *Alison.* (7.) *Grissell.*

'III. THOMAS ROSS of Craigie married *Jean Hepburn;* by whom he had one daughter, *Margaret;*[15] who married John Seytoun, apparent of Lathrisk. Jean Hepburn was infeft in the lands of Hilton Malar, in liferent. After the death of Thomas Ross, she married Peter Oliphant of Turings.[16]

'IV. JOHN ROSS of Craigie succeeded, as heir of entail, to the lands of Craigie, upon the death of Thomas. He married *Agnes Hepburn;* and had by her, (1.) *Patrick*, who married *Beatrix Charterhouse* (*Charteris.*) She was infeft in the lands of Hilton Malar, in liferent, Apr. 9, 1575.[17] After his death, which took place before that of his father, his relict married Robert Leckie, apparent of Kypdarroch.[18] (2.) *Mr Robert Ross*,[19] who was infeft in the estate of Craigie, and was designed "fiar of Craigie" before his father's death, which took place about 1601.[20] He married *Margaret Eviot.* He seems to have sold the lands of Craigie to Mr David Moncreif, son of William Moncreif of that Ilk, before 1620. (3.) *Mr Thomas Ross*, the unfortunate subject of the preceding Trial. (4.) *Andrew.*'[21]

[1] *Sheriff Records of Perthshire*, Jan. 12, 1573. [2] May 20, 1588, James Lindsay, apparent of Dowhill, was served heir to *Jonet Ros*, his mother, in a piece of land and orchard in the barony of Forgundennie; and fishing in the Water of Earn.—*Inquisit. Retorn.* Perth, (1055.) [3] *Sh. Rec.*, Jan. 12, 1573. [4] *Ibid.* Apr. 22, 1573. [5] *Ibid.* Jan. 12, 1573. [6] See this Collection, I. 25. [7] *Sh. Rec.*, Nov. 3, 1591. [8] *Ibid.* [9] Knox's Hist. of Ref., p. 28. [10] *Sh. Rec.*, Mar. 14, 1550. [11] *Ibid.* Jan. 5, 1549. [12] *Ibid.* Apr. 28, 1573. [13] *Ibid.* Jun. 12, 1577. [14] *Ibid.* [15] She was retoured heir to her father, in the lands of Mayler, lying within the barony of Craigy, Feb. 19, 1574.—*Inquis. Retorn.* Perth, (36.) [16] *Sh. Rec.*, Jan. 15, 1574, and Apr. 20, 1575. [17] Apr. 16, 1600, *Peter Oliphant of Turings*, having acquired an annualrent of 150 merks out of the Maynis of Malar, Barclay's-hauch, &c., in the barony of Craigy, from *John Ros of Cragy*, and *Agnes Hepburn*, his spouse, under reversion of 1400 merks, with their joint consent, sells his right to Mr John Moncreiff of Easter Moncreiff, and Jane Spens, his spouse. This was confirmed by Charter under the Great Seal, Jun. 28, 1602.—*Reg. Mag. Sig.*, XLIII., 262. [17] *Sh. Rec.*, Jun. 9, 1596. [18] *Ibid. eod. loco.* [19] It appears, by the Great Seal Register, that, on May 21, 1602, *Robert Ross of Cragy*, in consideration of the price of 4150 merks, sold to Christian Moncreif, eldest daughter of William Moncreif of that Ilk, the Mill of Craigy, with the Mill-lands, and three quarters of the town of Craigy, lying in the Barony of Craigy and Sheriffdom of Perth. This Charter of Sale was confirmed by King James VI, Jun. 28, 1602.—*Reg. Mag. Sig.*, XLIII., 261. [20] *Sh. Rec.*, Oct. 13, 1598, and Jan 13, 1601. [21] *Ibid.*, Oct. 9, 1591.

To these notices, the following additional information may be annexed.

V. Mr Robert Ross of Craigie, above mentioned, seems, from entries in the Kirk Session Records of Perth, to have been reduced to a state of the utmost poverty and destitution. Mr James Scott, in his Extracts from these Records, has the following melancholy entry:—'On the 21st of November, 1620, *Andrew Ross*, in name of *Mr Robert Ross, sometime of Craigie*, his brother, produced before the Session the said *Mr Robert's* Supplication, showing his present misery, and divers diseases wherewith he is vexed, craving support. Three pounds were taken out of the Thesaury and delivered to the said *Andrew*, to give this brother.'[1]

The Editor has not been fortunate enough to obtain any material information regarding the personal history of *Mr Thomas Ross*. From his own Depositions,[2] however, it is abundantly clear, that he must have endured great privations while in England. In that document he actually asserts, in the most solemn manner, that he was driven, by his desperate circumstances, to adopt the unhappy step which ultimately proved the cause of his destruction, in the vain hope, that the wit and talent he had thus exhibited in so bad a cause, would not only plead his apology with the King and Court, but become the means of his future advancement. *Mr Scott* merely remarks, as in reference to this matter, that 'it appears, from a Supplication to the [Kirk] Session, a considerable time before, that *Mr Thomas Ross* had been a long time in the Prison of Edinburgh.'

In conclusion of the disagreeable subject, it is only necessary to add one other entry, from the Kirk Session Records of Perth. It is pleasant to remark, that that charitable body had all along acted in the kindest manner towards this truly unfortunate family; and farther, that they appear to have been actuated by the same pious feelings, in numerous other cases of a similarly distressing description.—'Jan. 9, 1621. Mr John Guthry, Minister, reported, that he had given *thirty shillings*, which he had received from the Thesaury, to *Andrew Ross*, to bear his expenses, when he passed to the visitation of [*his brother*] umquhil *Mr Thomas Ross*, before his execution.'[3]

The Editor has failed in tracing the period when Ross was admitted a Master of Arts, and at what University, although he was politely assisted in his enquiries by the Reverend Dr Lee, who gave him access to the Rolls of the Universities of St Andrews and Glasgow. He fears he has already encroached too much on the limits of this work, and now leaves the reader to draw his conclusions as to the usage and cruel fate of the unfortunate Mr Thomas Ross.]

I. Letter, *the King to the Privy Council of Scotland, with instructions as to Mr Thomas Ross.*[4] [*Sine data.*]

Righte truſtie and righte welbeloued coſen and counſellour, and truſtie and welbeloued counſellour, wee greete yow well. Wee ſende yow here enclofed, a Libelle, (written by a villanous caytiffe, or rather monſter, of our owne contrie,) whiche, in time of Diſputations at Oxforde, was affixed vpon a gate of one of the Colleges, as Thieses to haue bene diſputed: And a ſcholler, hauing taken doune and red the firſt ſix lines, (not daring to be confcious to him ſelfe of reading furder of ſuch purpos,) preſentlie caried to the Vice Chancellour; who, ſuſpecting who mighte be the penner, ſente for him; and hauing gotten his Confession, that not onlie he was the author, but likewiſe, that he wolde maintayne all to be trew which he had ſette doune therein, the Vice Chancellour diſcreetelie and dewtifullie committed him cloſſe priſoner to the Caſtle of Oxforde, and ſente the Libelle to vs, that Wee mighte declare oure pleaſour, bothe concerning it and the author. Whiche, his diſcreete cariage, hath, in our iugement, deſerued to be, by a Letter of thankes frome our wholle Counselle,

[1] *Mr James Scott*, Minister at Perth's Extracts from *the Kirk Session Records of Perth*, II., 8, &c. [2] See this Appendix, p. 588, &c. [3] *Scott's* Extracts from *Kirk Session Records of Perth*, II., 8. [4] From the Original draught, preserved amongst the *Denmylne Papers*, Adv. Library. It is carefully corrected, and interlined in many places.

there acknowledged. WEE likewife fende yow the perfon of the man, to be cenfured by yow, willing yow firfte to examine him, and thereafter aduefe of the forme of punifhment whiche yee fall thinke fitte to be inflicted vpon him. For, although by the Lawes of this our kingdome, it be not permitted for to vfe extraordinarie punifhementes, yat hath it euer bene lawfulle for the KINGES there, to deuefe and inflicte punifhmentes, according to the qualitie and nature of the offence, which in this particulare can be no leffe then Treafon[!] For if no man make queftion but that the writing of an inuectiue[1] againfte THE KING and his progenie is Treafon, in the higheft degree, and in our opinion it is a grevous faulte, (and WEE could more eafilie forgiue the writeing againfte our felfe,) then[2] againfte the wholle Nation frome whence WEE ar fprunge. And if it wer a mater capitall in Germanie for STARCOIUS[3] (being a German, a mere ftranger to Scotland, and one who, perchance, had bene hardlie vfed by fome particulare perfon there) to haue written againft that wholle Kingdome, how much more mufte it be capitall to this fellow, who, being Scottes borne, hath fo villanouflie, filthilie, yea, and falflie, defamed his owne contrie, by writing in fuch forte againfte his contriemen, the fpecialler of our feruantes, [and perfuaded a courfe to be taken againft them, which poffiblie could not be performed, without manifeft danger and manifeft violence againft our felffe,[4]] and fo much the more is his offence greeuous, as that, by the fpace of two monethes before, he continuallie vaunted that he wolde do fuch a feate. IT is therefor our pleafour, that yee aduife vpon his punifhment, and hauing refolued, that yee aduertife vs with all expedition. So fare yee well.

II. LETTER, *the Privy Council of Scotland to the King. Jul.* 30, 1616.

MOST SACRED SOUERANE,

WE reffaued youre MAIESTEIS Letter, with the infamous LIBELL writtin be that wretched and vnhappie fellow ROSSE, and we imparted the fame to youre MAIESTEIS COUNSELL; who, with all dew reuerence and moft humble thankis, doe acknowledge youre MAIESTEIS fingulair cair and prudent directioun, alfweill in this, as in all otheris thingis importing the credite and reputatioun of this youre MAIESTEIS Kingdome; and thay haif writtin thair awne thankis to *The Vice Chancellaire of Oxfoorde*, for his wyfe and kynd refolutioun and proceidingis, in that mater.

We haif aduifed with THE LIBELL, and with the Lawis and Conftitutionis of this Kingdome, maid aganis the writtaris and fettaris oute of fuche infamous Libellis; and we find the fame to be capitall, and pvneifhable in the heigheft degree. This fellow is not as yitt come heir; and becaus of the approitcheing vacance,[5] and diffolueing of THE COUNSELL, we haif gevin directioun to THE MAGISTRATIS OF EDINBURGH, howfoone he fall aryve, to committ him cloife prifounair in thair *Irne-Houfe*,[6] and to lay him in irnis; and vpoun thair aduerteifment, we fall conveene and examine him; and accordinglie, we fall gif directioun for his tryall and convictioun, and fall fuperceid the pronunceing of Doome, till we vnderftand youre MAIESTEIS forder pleafour, anent the forme of his pvnifhement. Oure opinioun is that he falbe HANGED at *the Mercatt-Croce of Edinburghe*, and his heade affixt on ane of *the Portis*. But in this we fubmitt oure felffis to your MAIESTEIS directioun; qubairunto we fall conforme our felffis. And fo, praying God to bliffe your MAIESTIE with a lang and happie reignne, we reft

Your Maiefteis moft humble and obedyent fubiectis and feruitouris,

AL. CANCELL[S]. BINNING. S. W. OLIPHANT.

HALYRUDHOUS, penult July, 1616.

TO THE KING his moft facred and excellent MAIESTIE, &c.

[1] The original words had been 'such an execrable inuectiue.' [2] On the margin, 'that one should write against his own countrie.' [3] See the Introduction to *Ross's* Trial, III., p. 445, &c. [4] The words within brackets are added on the margin. [5] 'Vacance;' vacation. [6] Their strong iron room, or 'cage,' as it was afterwards called, in which desperate criminals were confined previous to their execution.

III. *Followis* THE THESE, *with* THE APPENDICES *adionet thairto, tranſlated.*[1]

THAT all SCOTTISMEN aucht to be throwin furthe and expellit out of THE COURT OF ENGLAND, (excepting his gracious MATIE, his ſone, and few vtheris,) and that þe INGLISCHMEN ar michtielie blindit, deceavit, and fylet, albeit thay be vtherwayis ane Natioun full of eyis, and quick-ſichtit, that ſufferis ſo vnproffittable and pernicious a multitude and pudle of raſkallis to rage and bear dominioun within thair cuntrallis and bowellis. Off quhilkis blaſphemeis (ȝe haif writtin) that ȝe wald rander and follow out the maiſt juſt reaſones, by Godis grace, at ane vther occaſioun, moir lairglie and accuratlie, bothe by proſe and verſe. Bot now ȝow put furth ȝour finger to ſchaw only the fontanes, and theaſe in few number, be reſſone ȝe inlaikit laſer[2] and helpis to performe the ſamyn.

I. SANCT JEROME, AUGUSTIN, and STRABO wryttis, that SCOTTISMEN of auld war men-eitteris, or eatteris of menis fleſche; and trewlie, (as ȝe beleve,) for as ȝit the fleſche whilk the ancient Scottis ſwallowed ſtikis in the jawis and teith of the Courtioures, quhairby thay ar provoikit to ſuche ane inſatiable avarice and intollerable pryde.

II. JOSEPHUS wryttis, in his booke againſt Appion, that, in the tyme of Amenophis, King of Ægipt, thair raget and rauaget vp and doun tua hundreth thowſeand lipperis in Ægipt, quha, by vnlauchfull meanis, and by mervellous craftines and ſubtillitie, emptied and pilleid[3] all þe ſubſtance and riches of Ægipt; whilk wald haif bene hailliſie vndone, gif this vnhallowit menȝie[4] had nocht, by the wiſdome of the King and Nobillis, bene caſtin out and expellit: Sua, peace and peace,[5] THE KING and COUNSALL OF ENGLAND ſall be vndone, and go doun, iff this companie or band that robbis Kingdomes and landis be nocht ſent bak to thair wounted ſeattis and ſtallis.

III. THE ſeaven leane ky[6] of Pharao conſwmet and d'ſtroyit the ſevin fatt and weill fed ky, and ȝit war nocht ſatisfeit; and the ſevin deaff and toome[7] earis of corne, blaſted with the Eaſt wind, ſwallowed vp the ſevin big and fatt eares, and war nocht filled: Swa, theſe Courtioures, by thair begynning, and offspring, and firſt eſtait, being moſt miſerable, thay diſtroy, overturnes, and conſumes INGLAND, ane maiſt plentieful cuntrie; and ar nocht ȝit filled with ſo grit and evill conqueiſſit[8] ritches, acquyret by the ſchipwrak of þe haill Kingdome of England.

IV. THAY quha, in þair ȝouth-heid,[9] war trwbillit with famine and hunger, can nocht, quhan thay ar cum to thair full growne aige, by no plentie, be ſatiat:[10] Sua, it befallis vnto theſe, quha of maiſt ſklender begynning, by mad mirriement and ſport of Fortoun, ar cayreid vp to the heicheſt top: ȝea, gif þair war gevin vnto his maiſt bountiefull and liberall MAIESTIE ane thowſeand philoſophik ſtones, quhairby the haill Oceanus micht be convertit in gold: ȝitt, theſe wald nocht be filled, gif the Cantabrik or Biſkay Sea of Spayne, war gevin vnto thame to drink; thay wald nocht ſuffer ane thriſtie bird to drink ane drope thairof.

V. THAY ſpend more in þair gairtanes, and ribbens[11] in the latchettis of thair ſchooes, than þair fatheris beſtowis in þe intertenement of þair haill famelie. O quhat tymes ar theſe! O quhat maneris be theſe! O the infamy of the world and reproche of the earthe! Now þair is mony Smerde Magiens, but thay vaunt thame ſelffis ſa to be.

VI. THESE Scottis Courtioures (verrie few exceptit) haif the diſloyaltie or vnfaithfulnes of the Carthaginianis; the menſworne aithes of the Phrygianis or Trojanes; the luxurie of the Perſians; the avarice of Mydas, King of Phygia; the crewaltie of the Eſſèdonis, ane people of Sythia; (quhilk people ſingis at þair parentis funerallis, and drinkis in ȝair ſkullis, and eattis þair fleſche mingled with vther beiſtis;) the prophanitie of Epicurus; the deceat of Synon; mair wyld than a carian, a bettill, or clok vnder the wingis of ane Eagle; thay vſe the ſpuilȝeis[12] of Spartacus, (this Spartacus was a Thra-

[1] From the identical copy of the Dittay, which had been transmitted for THE KING's inspection, preserved among *Sir James Balfour's MS. Collections*, Adv. Library, Edinburgh. [2] Wanted leisure. [3] Pillaged; plundered. [4] Train; company; gang. [5] So, or in like maner, piece-meal. [6] Seven lean kine. [7] Empty. [8] Ill-gotten, or acquired. [9] Youth; minority; less-age. [10] Satiated. [11] Garters and ribands. [12] Spoils.

cian fenſer[1] quha with Chyſus and Oenomaus brak out of the Fence-Scole of Lentulus, and dreſſit ane airmy of ſervandis, and overcame Clodius Glaber his airmy, and ſpuilȝeit all Campania, and overthrew Lentulus airmy and Caſſius troupes, bot was defait by Craſſus,) and the fearcenes of Virratus (the Portugall Luſitanius, quha frome paſtor become ane hunter, and þaireftir the chiftane of ane airmy, trublet the Romaynes, and defait thame in Spayne, and at lenth was ſlayne be treaſſone, procureit be Cœpio), and the leaſingis of the Candians or Cretes.

VII. Vnto his ſchyneing and royall Matir, be vntrublet health and increſe of glorie! Bot God, frome the heavnes, perſew theſe Courtioures with blak fyre and brimſtone! I ſhall, ſo long as I leave, for thair diſtructioun, ſchaw my ſelff Coriolanus, and nocht Themiſtocles; that is to ſay, ane oppin ennymie, and nocht ane ſecreit freind.

VIII. O Inglische! Inglifche! The moſt expert and wyſeſt Natioun in weir,[2] the terrour of the Spanȝaird, triumparis over France and Guyene by ſo long a tyme, in quhat benumbnes or drouſines ar ȝe fallin? Ȝe, quha in weir and battell ar intometable,[3] now ȝe ſall go doune quiklie by diſſait, at vayne appeirances of imaginarie matteris, and by the toyis of fals accuſaris and delatouris, in quhome thair is nocht ſo muche fauorines or witt as in the quhyte of ane egge! Ȝitt all the wealth and commodities of ȝour moſt fluriſcheing kingdome, is cayreit away in boittis and crearis,[4] thiftiouſlie, to Scotland; and incontinent, being helpit with ȝour awin commoditeis, thay will vtterlie trampill vnder fute ȝour Natioun and countrie, and will cut ȝour throttis with ȝour awin ſuorde, befoir ȝe be awar! Quhat a patient Socrates will indure theaſe iniureis! Quha may nocht ſnuff or ſmell gritter ſchortlie to follow?

IX. Ȝe haue gottin out of Scotland ane moſt worthie Prince; nocht ane thowſeand Kingis, counterfute Stage-playeris, quhytted tombes![5] Thair is hingand aboue ȝour heidis, or lying vpone ȝour ſchoulderis, ane moir hard ſervitude and ſchearpar captiuitie than over Nationes quhilkis ar ſubdewid and overcum by weir! For, eftir the Romanes had overthrawin, in weir, the Syrianis and the Ægiptianes, thay gave thame to be governet be thair awin cuntriemen! Thay exactit only tribute dew frome the vanquiſched! Sall, thairfoir, thoſe barbarous people poſſeſs and injoy the firſt places, in Courte, in Counſale, in Kirk, in Nobilitie, in Landis, offices, functiones, and giftis of Ingland? Thair furlie, the libertie and glorie of England is evaniſched! Now, England is haillyly[6] delyuerit over in the handis of Scottis Courtiouris, and the Judges haif enterit þair nekis vnder the ȝoke of theiffis! O, the Warld is turned vp ſyde doun! We ar now overturned vnto the auld maſs and chaos of confuſioun! Lett ſum revendge ſpring out of my bones, that may cheſtize with fyre and ſuord the Scottis Court and her poſſeſſoures. Geve thankis, ȝe Scottis Courtioures, vnto my povertie, and nocht vnto the barrannes and penurie of my ingyne, gif I airme nocht all Ingland to cut ȝour throttis. Bot the Lord preſerve ever more his awin annoynted, both weilbelouit and electit!

X. Remove this ſtinking pompe, pudle, and triffles of the Scottis Court, and pride of this hautie, fekles,[7] and impotent commontie. Thane, ſall thair be few in ȝour boundis that ſall be beggeris, nidie,[8] ragget—than, the treyis, gibbettis, and gallouſſis of all the cuntrie ſall nocht be laiden with the wecht of the hangit vp carcadges![9] The Scottiſmen, as loch-leitches, and wormes in coirnes, drinkis out the ſap of ȝour cuntrie, and ſoukis out ȝour merche,[10] by inlaik quhairof ſo many ar led and drawin to thift and robberie! Thoſe Courtioures draw out gritter welthe furth of ȝour bowellis, by ȝour knowlege,[11] than France, Germany, and Spayne, is able to affoird; quhilkis guidis, whan thay ar thus pullet[12] away, quhat ſall þe maiſterfull and niedie cowmontie[13] of Ingland do or vndertak, bot to caſt thame

[1] Fencer; gladiator. [2] War; the art military. [3] Indomitable. [4] Boats and *crears*. Crears were a sort of vessel much in use in the Western Islands, to which they appear to have been peculiar. [5] Whited sepulchres. [6] Wholly; entirely. [7] Weakly; feeble, &c. [8] Needy. [9] Carcasses. [10] Sucks out your marrow. [11] Without your knowledge; secretly; by stealth. [12] Perhaps, for '*pilleit*;' pillaged; plundered. [13] Destitute and needy 'commonalty,' or common people.

ſelfis heidlong in ane golff,[1] quhilk mycht leave[2] ſufficientlie, without manis hearme, gif thoſe howlattis and ſtymeis[3] war ſchote[4] away.

O, worthieſt Inglifchmen! Wey the force and reaſones of this my Counſall, quhairof I haif ſkairce recited the tent pairt; and ȝe ſall perſave that I am come to ȝour cuntrey as ane helthfull ſtarr, quhilk thir Courtioures haif drowned with the ſea wallis, as the Lycaonian Starr, or Vrſa Maior, to quhome it war ane villanie to have ſo drowned ſuche ane ſtarr.

Bot we ſall nocht all die to day vnrevendget!

IV. *Followis the tennour of* THE DEPOSITIONES *of Mr Thomas Roiſs.*

AT EDINBURGH, the elleviot day of Auguſt, 1618. In preſens of Sir Williame Oliphant of Newtoun, his Maieſteis Aduocat.

MR THOMAS ROISS, humblet on his kneis, and deiplie ſuorne vpone his ſolempne oathe, ſayis, that he will declair the treuthe in all and everie thing that ſall be demandit of him. Demandit, yf THE THESIS, and APPENDICES þairof, producet and ſchawin vnto him, and writtin on thre ſydis of paper be his awin hand-writt? Depones and grantis, that thay ar his awin hand-writt—and that na vther perſone wrait ane word or Lettir þairof.

Demandit, quhat moved him to wryte them? Depones, that he, being ane gentilman borne, depryved of all benifeit that he micht expect of his fatheris eſtait, and being reducet to the extreme point of miſerie and povertie, and haveing reſſauet mony inſupportable iniureis of his cuntrie men, at Courte; he, being eſchamed to beg, and diſdaneing to ſteill, and haveing no meanis quhairby to intertene[5] him ſelff, ffinding no comforte nor releif of his contriemen at Courte, he þairfoir, being in diſpair and mad, out of his diſtemperat humour and frenyſie, and ſair aganis his heart, without ony ſetled reſolutioun, and without ony purpois to do evill, bot to ſchaw the greif of his heart, and to move pitie and compaſſioun towardis him, wrait thir THESES; thinking, that the wryting þairof, in this his mad humour and diſpoſitioun, wald raþer procure pitie nor[6] wraithe, at HIS MATIES handis; and that God, peradventure, wald moue HIS MATEIS heart, who is a prudent and wyſe Prince, to think that the deponer was drevin, vpone plane miſerie and neceſſitie, to wryte thame; and þat þairfoir HIS MATIE wald pitie his diſtres and miſerie, and help him: And he apprehendit that ſome weill-myndit Courtioures wald interceid for him, and ſchow HIS MATIE that he quho had done ſo weill vpone a evill ſubiect, wald do far better vpone a goode ſubiect, gif he war imployed; bot, yf it ſould pleis God to move HIS MATIE to think vtherwayis of this matter, and to tak it in evill pairt, it behooved the deponer to abyde Godis will and THE KINGIS MATEIS.

Demandit, quhat he did with thir THESES, eftir the wryting thairof? Deponis, that he affixt thame on a dur of the Kirk, callit ST MARIES KIRK, at OXFURDE, vpone Twiſday, being a preiching day, in the moneth of July laſt, immediatlie as the people war diſſolueing frome the Sermone, and as DOCTOR GODWENE, VICE-CHANCELLOUR of THE VNIUERSITIE OF OXFURD, was cuming out of the Kirk. And depones, that immediatlie eftir þai war affixt, ane man, quhome the deponer knowis nocht, tooke thame doun, and cayreid thame to þe Vice-Chancellour. And grantis, that THE THESES now producet and ſchowne vnto him ar þe ſame verrie Theſes, and that ſame Paper quhilk he wrait and affixt, as ſaid is.

Demandit, yf at ony tyme afoir þe wryting of THE THESES he was in conference with ony perſones þairanent? Depones, that ane moneth afoir the affixeing of THE THESES, he was in conference with þe Vice-Chancellour; and regrated vnto him his hard eſtait and conditioun, and the vnthankfulnes of his countrie men, the Courtioures, quho wer his gritt vnfreindis.[7] And he ſchew the Vice-Chancellour that he had a purpois to go to France, and intreited him that he mycht haif a *viaticum*[8] to tranſ-

[1] Gulf. [2] Who might live, &c. [3] Owls and bats. [4] Thrust; driven. [5] Support; maintain. [6] Than. [7] Enemies. [8] In this sense, *viaticum* seems to have been a term employed to denote a charitable contribution raised by authority, within the Universities, for enabling poor students to undertake journeys to foreign parts, &c.

poirt him. Quhairvnto the Vice-Chancellour ȝeildit. Bot the deponer being efchamed to go through the Colledges to collect the fame, he reffauit only foure or fyve pund Sterling, and fpendit it as he gat it; quhairas, gif he had reffauit all that wald haif beene gevin, in caice he had tane panes to go throuche the Colledges to haif collectit it; or yf he had gottio ony *viaticum* frome HIS MATIE, he wald nocht haif writtin thir THESES, bot wold haif gone to France.

Grantis alfo, that he regraited the vnkynd deilling of the Scottis Courtiouris towardis him, to Sir Harie Schaveill, Principall of Eittin Colledge, befyde Wyndfoir; bot denyis, vpone his gritt aithe, that he impairted his purpois to wryte THE THESES, outher[1] to the Vice-Chancellour or to him.

Demandit, be whofe advyfe he wrait thir THESES? Or, yf he had conference with ony perfone thairanent? Depones, vpone his grit oathe, that he had no advyfe, counfall, nor informatioun gevin to him in that matter; bot being at Greenwitche, a littill eftir he went to Oxfurd, he addreft him felff to one of THE KINGIS Chaiplaines, quho is a heiche[2] tall man, and was walking in Grenewitche Hall for þe tyme. His name he knowis nocht. And he intreited the Chaiplane to tell THE KINGIS MATIE, that he was borne away; and that he had long waited on, without ony help or fuppoirt; and that he was now drevin to grit povertie; and that he wald pray God for the weilfair of HIS MATIE and his childrene—bot, for his cuntriemen, the Courtiouris, quha had bene fo vnthankful vnto him, he fould rather be lyk Martius Coriolanus vnto tham, nor[3] Themiftocles.

Grantis alfua, that afoir his paffing to Oxfurd, he forgaderit with on Johnne Line, Scottifman, a taillour, duelland in Titler ftreit; and that he tauld him, that wer not for þe refpect and reuerance that he cayreid to HIS MATIE, he was halflingis myndit (yf he gat nocht fome fuppoirt to carye him to France) to fett vp fome THESES, aither in Oxfurde or in France, againft the Scottis Courtioures, and that it was goode for THE KING to fend fome of thame away. And the deponer defyret Johnne Line to acquent THE KINGIS MATIE heirwith, be Petitioun; and he craved Johnne Lynes advyce, how he micht efchew the wryting of thefe THESES; bot Johnne Lyn had no advyce in the matter. And fayis, vpone his grit oathe, that he nevir reveillit forder of this matter to ony perfone, bot fo far as he hes confeft, concerning the Chaiplane and Johnne Lyn. And denyis, vpone his oathe, that evir he gave out or difperfit ony coppeis of thir THESES.

Demandit, yf at ony tyme eftir he had meditat vpone the wryting of THE THESES, and afoir his affixing of the fame, he communicat the matter to ony perfones, or fchew þe THESES vnto thame? Depones, that he only reveillit the matter to his oift[4] in Oxfurd, callit Johnne Ewing, taillour, and to his wyffe, in this maner, to wit, that he was going to wryte fomething quhairof the haill fcolleris of Oxfurd wald fchortlie get knowlege, and wald heir of it; thairfoir, let me be quyet a quhyle, and lett no man truble me. And this was xxiiij houres afoir þe affixing of the THESES.

Demandit, how it was knowne that he had writtin and affixt the THESES? Depones, that the Vice-Chancellour knew his hand-writt, and fend for the deponer within a quarter of ane hour eftir the affixing of the fame, and afkit of the deponer, 'Gif he had writtin thame?' Quhilk the deponer grantit. Quhairvpone the Vice-Chancellour fend him prifoner to the Caftell of Oxfurde; quhair he was ftraitlie keipit ten dayis; till thre Scottifmenne of the Gaird war fend to bringe him to Courte. Denyis that, during his abode in Oxfurde Caftell, he had fpeiche with ony perfones anent this matter, bot[5] with his keipparis and vtheris priffoneris; quho afkit of him, the caufe quhairfoir he was wairdit? To quhome he anfuerit, becaus he had writtin fome littill thing aganis his cuntrie-men, the Courtioures, advyfeing THE KING to fend fome of thame hame.

Depones, that quhen he come to Courte, he was putt in a Inne, befyde Charing Croce, quhair he ftayed thre nychtis and two dayis; and that he was examinat be the Duke of Lennox,[6] the Marqueis

[1] Either. [2] High. [3] Than. [4] Host; landlord. [5] Unless; except. [6] Ludovick, *second* Duke of Lennox, who had held some of the highest honours in Scotland. He was Great Chamberlain, Lord High Admiral, and Lord High Commissioner to the Parliament of Scotland, 1607. The Duke of Lennox was successively created Earl of Richmond, (Oct. 6, 1613,) Earl of Newcastle and Duke of Richmond, (May 17, 1623,) Master of the Household, first Gentleman of the King's Bedchamber, and one of the Knights Companions of the Order of the Garter. He died Feb. 16, 1624, *ætat* 50, without being survived by any of the issue of either of his three marriages.

of Hammiltoun,[1] the Vicount Fentoun,[2] the Lord Hay,[3] and Sir Williame Alexander.[4] And þat pairefter he was convoyed to (a) ſchip of Preſtoun, lyand at Southwark, be Mr Johnne Broun and Patrik Logane, Scottiſmenne, and be ane Inglifchman of the Gaird. M. T. Ros,[5] with my hand.

T. W. Oliphant.

No. V.

Documents relative to the 'Egyptianis,' or Gipsies.

[In many parts of the preceding Volumes, Trials have been inserted, from time to time, regarding the remarkable Asiatic people, commonly known in early times, in Scotland, by the name of Egyptians. It seemed to the Editor to be desirable to afford to the enquiring reader some traces of their wanderings in Scotland, during the fifteenth and sixteenth centuries; and for that purpose, he has examined as many of the earlier Records as his opportunities have, at present, permitted.

It is sufficient, for the purposes of this Collection, to remind the reader, that, from whatever country that singular race took their origin, (which, though there be much room for difference of opinion on the general question, was assuredly Oriental,) and whatever the causes may have been which prompted their emigration, or occasioned their expulsion, from their native soil, this wandering people first made their appearance in Europe early in the fifteenth century. They succeeded, in spite of numerous decrees of expulsion and persecution, in making good their settlement in various kingdoms, and especially in the countries of Poland, Germany, Hungary, France, Spain, Italy, England, and Scotland. It is very remarkable, that, although they have now been resident in Christendom for nearly *four hundred years*, they have preserved themselves as a separate and peculiar race, in *all* the countries where they have sojourned; and have all along been characterised by their distinctive manners, customs, language, and superstitions, which have been kept almost pure and unimpaired, from the date of their first emigration. Indeed, few instances have occurred, in any country, where any considerable portion of them have steadily settled in towns, or followed any

[1] James, *second* Marquis of Hamilton, a great favourite of King James VI. He was created an English Peer, by the titles of Baron of Ennerdale, in Cumberland, and Earl of Cambridge, June 16, 1619; was a Gentleman of the Bedchamber, Steward of the Household, and Lord High Commissioner to the Scottish Parliament, 1621; and Knight of the Garter, Jul. 7, 1623. Died Mar. 2, 1624-5, *ætat* 36. [2] Alexander, Viscount of Fentoun, eldest son of Sir Thomas Erskine of Gogar, created Earl of Kellie, Mar. 12, 1619; and father of Thomas, *second* Earl of Kellie. Obiit, Feb. 1633. [3] John, *eighth* Lord Hay of Yester, created *first* Earl of Tweeddale, Dec. 1, 1646. [4] Of Menstrie, the celebrated Peet, who obtained a Grant of Nova Scotia, in America, by Charter, Sep. 10, 1620. He was created Viscount of Stirling, &c., Sep. 4, 1630; and Earl of Stirling, Viscount of Canada, and Lord Alexander of Tullibody, June 14, 1623: and died at London, Feb. 1640, but was buried at Stirling, Apr. 12, 1641. [5] 'Mr Thomas Ross, preſent Miniſter at *Cargill*,' obtained a Gift, under the Privy Seal, of the Vicarage of Cargill, with the fruits, rents, teinds, &c., and 'with the Manſe and gleib thairof,' lying within the diocese of Dunkeld, and sheriffdom of Perth; 'during all the dayis of his lyftyme.'—*Register of Presentations to Benefices*, Vol. III, Jul. 26, 1606.

sedentary or useful handicraft. On the contrary, they have literally wandered from place to place, seldom remaining above a few days in one spot, "living in tents," and subsisting by plunder or knavery.

In those kingdoms, where they have effected a steady footing, they have all along been distinguished by the name of BOHEMIANS, GITANOS, ZINGARI or CINGARI, ZIGEUNERS, TZINGANYS, GIPSIES, and EGYPTIANS.

As so much has been written regarding the origin and history of the Gipsies, by *Hoyland*, *Grellmann*, &c.[1] it is only necessary to premise these facts, in the briefest manner. The reader will find several very curious and interesting essays on the history of the Scottish Gipsies, written in a popular and entertaining form, in the two first volumes of *Blackwood's* Magazine, and also in the Encyclopædias. The Editor has just been informed, that a work is at present preparing for publication, which professes to embrace all that is known regarding the history of these wanderers, especially in the various districts of Scotland, which renders it still less necessary to enlarge in this place.

It may be remarked, that in the fifteenth century, THE EGYPTIANS uniformly, in the numerous countries to which they migrated, gave themselves out to be *Christian Pilgrims*—and their leaders assumed the titles of KINGS, DUKES, COUNTS, or LORDS of LITTLE EGYPT; from which country they always pretended they had been expelled by the *Saracens*, on account of their RELIGION. Certain it is, that at present they appear to profess *no religious belief whatever*, and they lead the most immoral lives, and herd together like hordes of savages, in a promiscuous state, wholly unknown to any other race now extant in Europe, living "without God and without hope in the world." With their characteristic cunning, it is likely that this assumption of the appearance of *Pilgrims* was only in accordance with the superstitious and prevailing customs of the times. Under this character they had the address to impose upon almost all the Sovereigns of Europe, and obtained passports and privileges from them; and even THE POPE himself was not protected from their artifices, by his boasted *infallibility*.

In examining the Books of *the Lord High Treasurer* of Scotland, the following entries occur. They are here laid before the reader, without further comment.

'Jul. 17, 1492. Item, to Peter Ker to paſſe to THE KING[2] to the Hwnthall,[3] to get the Letteris ſubſcrivit to THE KING OF ROWMAIS, iiij ſ.

'Jul. 19. Item, to THE KING OF ROWMAIS meſſinger, at the Kingis command, xx li.

'Maij 2, 1501. Item, to *Peter the Moryene*,[4] quhen he paſſit his way to France, iij li. x ſ.

[1] *Hoyland's* Survey of the Gipsies—Grellman. *Hume* on Crimes. *Mackenzie's* Obs. on the Statutes, &c. See also *Acta Parl.*; *Burnet's* Hist. of Reformation, &c. [2] JAMES IV. [3] Of Glenfynlas, or Glenartnay, where the King was in use to resort at that season of the year. [4] It appears by other entries in the Records, that this person, and certain '*More laſſes*,' were minstrels and servants to the Queen.

'Maij 10, 1502. Item, to THE ERLE OF GRECE, be the Kingis command, xiiij ſ.

'Jun. 28. Item, to ANE KNYCHT OF GRECE, be the Kingis commande, vij lib.

'Item, for ane ring of gold, ſet with ane dyamant, and tua rubyis, in maner of *flour de lice*, iiij lib.

'Feb. 24, 1503. Item, in Drumfreiſe, to *Peter the Moriene*, ix ſ.

'Dec. 11, 1504. Item, quhen *the More laſs*[1] wes criſtinit, giffin to put in the caudill, ix ſ.

'Apr. 22, 1505. Item, to THE EGYPTIANIS, be THE KINGIS command, vij lib.

'1530. Item, to THE EGIPTIANIS that danſit before THE KING, in Halyrudhous, xl. ſ.'

These are the only early notices the Editor has hitherto met with, in that valuable Record. It is very probable, however, that some of them have no reference to Egyptians. A variety of other documents have been obtained from the Records of the Privy Seal, &c., which follow this brief and imperfect notice.]

I. LETTER *from King James IV. to the King of Denmark, in favour of Anthony Gawin, Earl of Little Egypt, &c. Anno* 1506.[2]

ILLUSTRUSSIME, &c. ANTHONIUS GAWINO, ex PARVA EGYPTO COMES, et cætera ejus comitatus, gens afflicta et miſeranda, dum Chriſtianam orbem peregrinationes ſtudio Apoſtolicæ Sedis (ut refert) juſſu, ſuorum more peregrinans fines noſtri regni dudum advenerat, atque in fortis ſue et miſeriarum hujus populi, refugium, NOS pro humanitate imploraverat ut noſtros limites ſibi impune adire, res cunctas, et quam habet ſocietatem libere circumagere liceret. Impetrat facile quæ poſtulat miſerorum hominum dura fortuna. Ita aliquot menſes bene et catholice, (ſic accepimus,) hic verſatus, ad te, REX et AVUNCULE, in DACIAM tranſitum parat. Sed Oceanum tranſmiſſurus noſtras Literas exoravit, quibus celſitudinem tuam horum certiorem redderemus, ſimul et calamitatem ejus gentis Regiæ tuæ munificentiæ commendaremus. Ceterum errabundæ EGYPTI fata, moreſque et genus eo tibi quam nobis credius notiora quo EGYPTUS tuo regno vicinior, et major hujuſmodi hominum frequentia tuo diverſatur imperio. Illuſtriſſime, &c.

II. LETTER, *under the Privy Seal, by King* JAMES V. *in favour of 'Johnne Faw, Lord and Erle of Little Egypt.'*[3] *Feb.* 15, 1540.

JAMES, be þe grace of God, King of Scottis: To oure Schereffis of Edinburghe, principall, and within the conſtabularie of Hadingtoun, Berwik, Roxburghe, Selkirk, Perth, Forfar, Fife, Clakmannane, Kinroſe, Kincardin, Abirdene, Banf, Elgin and Fores, Narne, Innernefe, Linlithq^{w}, Peblis, Striviling, Lanark, Renfrew, Dunbertane, Air, Drumfreis, Bute, and Wigtoun; Stewartis of Annanderdale, Kirkcudbrycht, Menteithe, and Stratherne; Baillies of Kile, Carrik, and Cunynghame; and þaire deputis; Proveſtis, aldermen, and baillies of oure burrowis and cieteis of Edinburgh, Hadingtoun, Lawder, Jedburgh, Selkirk, Peblis, Perth, Forfar, Cowper, Sanctandrois, Kincardin, Abirdene, Banf,

[1] Dec. 2, 1512, she is styled the 'QUENIS *blak madin*,' and on Feb. 1612-13, '*Blak Elene*.' And on Jul. 19, 1513, '*Blak Margaret*' gets a payment of xlviij s. They do not appear to have been Egyptians, but Negroes. The notices, however, are so curious that they are given along with the rest. [2] *MS. Reg.* 13. B. 11. Taken from *Pinkerton's* Hist. of Scotland, quarto, Lond. 1797, vol. ii. p. 444. [3] *Reg. Secr. Sig.* xiv., 59. A very unfaithful transcript of this document had formerly been published in the Appendix to *Maclaurin's* Criminal Trials.

Elgin and Fores, Narne, Innernese, Linlithqw, Striuiling, Lanark, Glasgw, Ruthirglenne, Renfrew, Dunbertane, Air, Drumfreis, Wigtoun, Irwyne, Kirkcudbricht, Quhitterne; and to all vþeris Schereffis, Stewartis, provestis, auldermenne, and bailleis within oure realme, greting. FORSAMEKILL as it is huimlie menit and schewin to ws be oure louit, JOHNNE FAW, LORD AND ERLE OF LITILL EGIPT; That quhair he obtenit oure Lettres vnder oure grete seile, direct to ȝow, all and sindry oure saidis Schereffis, stewartis, baillies, prouestis, aldermen, and baillies of burrois, and to all and sindry vþiris havand autorité within oure realme, to assist to him in executioune of justice vpoun his cumpany and folkis, conforme to þe lawis of EGIPT, and in punissing of all þaim þat rebellis aganis him: NEUIRÞELES, as we ar informyt, SEBASTIANE LALOW, Egiptiane, ane of þe said Johnnis cumpany, with his complices and pairt-takaris vndir-writtin, þat is to say, ANTEANE DONEA, SATONA FANGO, NONA FINCO, PHILLIP HATFEYGGOW, TOWLA BAILȝOW, GRASTA NEYN, GELEYR BAILȝOW, BERNARD BEIGE, DEMER MATSKALLA, NOTFAW LAWLOWR, MARTYNE FEMINE, rebellis and conspiris aganis þe said JOHNNE FAW, and hes removit þame alluterly out of his cumpany, and takin fra him diuerse sovmes of money, jowellis, claithis, and vþris gudis, to þe quantité of ane grete sovme of money, and on na wyse will pass hame with him, howbeit he has biddin and remanit of lang tyme vpoun þame, and is bunding and oblist to bring hame with him all þame of his company þat ar on live, and ane testimoniale of þame þat ar deid: And als, þe said JOHNNE hes the said SEBASTIANIS Obligatioune, maid in Dunfermling, befor our Maister houssald, þat he and his cumpany suld remane with him, and on na wyse depart fra him, as the samin beiris. In contrar þe tenour of þe quhilk, þe said SEBASTIANE, be sinister and wrang informatioune, fals relatioune, and circumventioun of ws, hes purchest our writingis, dischargeing him and þe remanent of þe personis aboue writtin, his complicis and pairt-takaris of the said JOHNNIS cumpany, and with his gudis takin be þame fra him, caussis certane our liegis assist to þame and þair opinionis, and to fortify and tak þair pairt aganis þe said JOHNNE, þair lord and maister; sua þat he on na wyse can apprehend nor get þame to haue þame hame agane within þaire awin cuntré, eftir þe tenour of his said Band, to his hevy dampnage and skaithe, and in grete perell of tynsall of his heretage, and expres aganis justice. OUR WILL IS HEIRFOR, and we charge ȝow straitlie, and commandis, þat, incontynent þir our Letteres sene, ȝe and ilk ane of ȝow, within þe boundis of ȝour Offices, command and charge all our liegis þat nane of þaim tak vpoune hand to resset, assist, fortify, supplé, manteine, defend or tak pairt with þe said SEBASTIANE and his complices aboue writtin, for na buddis nor vþer way, aganis the said JOHNE FAW, þair lord and maister; bot þat þai, and ȝe, inlikwise tak and lay handis vpoune þame quhareuir þai may be apprehendit, and bring þaim to him to be pvnist for þair demeritis, conforme to his lawis: And help and fortify him to pvnis and do justice vpoune þame for þair trespassis: And to þat effect, len to him ȝoure presonis, stokis, fetteris, and all vþer thingis necessar þairto, as ȝe and ilk ane of ȝow, and all vþeris oure liegis, will ansuer to ws þairupoune, and vnder all hieast pane and charge þat eftir may follow; swa þat þe said JOHNNE have na caus of complaynt heirupoune in tyme cuming, nor to resort agane to ws to þat effect, nochtwithstanding ony oure writings sinisterly purchest, or to be purchest, be þe said SEBASTIANE, in þe contrar. AND ALS, charge all oure liegis, þat nane of þaim molest, vex, inquiet, or trouble þe said Johnne Faw and his cumpany, in doing of þair lefull besynes, or vþerwayis, within our realme, and in þair passing, remanyng, or away-ganging furth of þe samyne, vnder þe pane aboue writtin: And siclike, þat ȝe command and charge all skippars, maisteris, and marinaris of all schippis within oure realme, at all Portis and Havynnis quhair þe said JOHNNE and his cumpany salhappin to resort and cum, to resaue him and þame þairin, upoune þair expenses, for furing of þame furth of oure realme to þe partis beȝond sey: As þai and ilk ane of þame siclike will ansuer to ws þairupoune, and undir þe pane forsaid. SUBSCRIUIT with oure hand, and under oure Priue Seile, AT FALKLAND, þe fiveteine day of Februar, and of oure reigne the xxviij ȝeir. *Subscript. per Regem.* [JAMES R.[1]]

[1] *Reg. Sec. Sig.* XIV. f. 59.—Vide also Apr. 25, 1553, and Apr. 8, 1554, Remission of Andro Faw, &c., for murder of Ninian Smaill.

III. Precept *to the Earl and Lord of Little Egypt; granting power to him to hang and punish all Egyptians within the Kingdome of Scotland. Dated, May* 26, 1540.

Prececeptum Litere Johannis Wanne, filii et heredis quondam Johannis Fall, Minoris Egipti Comitis ac Domini, et Magistri Egiptiorum, infra regnum Scotie existen.—Dan. sibi potestatem predictos Egiptios ad sibi obediend. et parend. plectere et punire, &c. Apud St Andros, Maii 26, 1540.[1]

IV. Act *of the Lords of Council, relative to* John Faw,[2] *&c. Jun.* 6, 1541.

The quhilk day, anentis the complaintis gevin in be Jhone Faw, and his brether, and Sebastiane Lowlaw, Egiptianis, to the King's Grace, ilkane pleinȝeand vpoun vther of diverse faltis and iniuris: And that it is aggreit amang thame to passe hame, and to haue the same decydit before the Duke of Egipt: The Lordis of Counsale, being avisit with the pointis of the saidis complaintis, and vnderstanding persitlie the gret thistis and scathis done be the saidis Egiptianis vpoun our soverane lordis liegis, quhaireuer thai cum or resortis: Ordanis Lettres to be direct to the Provestis and Ballies of Edinburgh, Sanct Jhonstoun, Dundee, Monrose, Aberdene, Sanct-androis, Elgin, Forrese, and Inuernese; and to the Schirefis of Edinburgh, Fif, Perth, Forfair, Kincardin, Aberdene, Elgyn, and Forese, Banf, Crummarty, Inuernese, and all vtheris Schirefis, stewartis, provestis, and ballies, quhair it happinnis the saidis Egiptianis to resort,—to command and charge thame, be oppin proclamatioun at the mercat croces of the heid Burgh of the Scherefdomes, to depairt furth of this realme, with their wifis, barnis, and companeis, within xxx dayis efter thai be charget therto, vnder the pane of deid: Notwithstanding ony vtheris Lettres or privilegis grantit to thame be the Kingis grace: Becaus his Grace, with avise of the Lordis, hes dischargit the samin, for the causis foirsaidis; with certificatioun, and[3] thai be fundin in this realme, the saidis xxx dayis being past, thai salbe tane and put to deid.

V. Respite, *granted to the Captain of the Egyptians and his three sons, for the Slaughter of Ninian Smaill.*[4]

Ane Respitt maid to Andro Faw, Capitane of the Egiptianis, George Faw, Robert Faw, and Anthony Faw, his sons; for airt and pairt of the Slauchter of umquhile Niniane Smaill, servand to John Lard, Smith; committit and done in the moneth of Marche, the yeir of God I^{m}.V^{c}. liij yeiris, upon suddantie: and for all actioun and cryme that may follow thairupoun: And for the space of xix yeiris to indure. At Lynlythgow, the xxiij day of March, 1553.

VI. Respite *to John Faw, and other Egyptians, for the above-mentioned Slaughter. Apr.* 8, 1554.[5]

Ane respitt maid to Johnn Faw, Egiptiane, Andro George, Nichoah George, Sebastiane Colym, George Colym, and uthers Egiptianis, now being within this realme; for arte and parte of the Slauchter of umquhile Niniane Small; committit within the toun of Lintoun—19 years. At Linlythgw, Apr. 8, 1554.

VII. Act *of Privy Council, 'anent some Egiptianis.' Nov.* 10, 1636.[6]

Apud Ed^{r}, 10 Novembris, 1636. Forsameikle as Sir Arthure Douglas of Quhittinghame haveing latelie tane and apprehendit some of the vagabound and counterfut theives and limmars, callit Egyptianis, he presentit and delyverit thame to the Shereff-principall of the shirefdome of Edinburghe, within the constabularie of Hadington, quhair they have remained this month, or thairby; And

[1] This short entry is all that occurs in *Reg. Secr. Sig.*, under the above date. [2] *Acta Dom. Con.*, XV., 155.
[3] If; *an.* [4] *Reg. Secr. Sig.*, XXVII., 3. [5] *Reg. Secr. Sig.*, XXVII., 36. [6] *Reg. Secr. Concilii.*

quhairas, the keeping of thame longer within the ſaid Tolboith, is troubleſome and bordenable to *the toun of Hadington,* and foſters the ſaids theives in ane opinion of impunitie, to the incourageing of the reſt of that infamous byke[1] of lawles limmars to continow in thair theiviſh trade: THAIRFOIR, *the Lords of Secret Counſell* ORDANS *the Shireff of Hadinton* or his deputs to pronunce DOOME and SENTENCE OF DEATH aganis ſo manie counterfoot Theives as ar men, and aganis ſo manie of the weomen as wants children, ORDANING the men to be HANGIT, and the weomen to be DROWNED: and that ſuche of the weomen as hes children to be SCOURGIT throw the burgh of Hadinton and *Brunt in the cheeke:* And Ordanis and commandis the Proveſt and Baillies of Hadinton to caus this doome be execute vpon the ſaidis perſons accordinglie.

No. VI.

OFFICES OF THE CLERKSHIP OF JUSTICIARY-GENERAL AND MASTER OF THE CEREMONIES, &c.

(*See Vol. III., p.* 558.)

[IN reference to the preceding entry in the Record, it may be interesting to insert the following singular Letter from Mr Alexander Colville, Justice-Depute, to Viscount Annan, which has been recovered from *Sir James Balfour's MS. Collections,* on account of its throwing some farther light on those important appointments; and besides, it is a curious document, and is highly characteristic of the parties concerned, and of the spirit of those times. It has also been thought proper to present to the reader a notice which occurs in the Books of Adjournal, containing the appointment of Sir George Elphingstoun of Blytheswood, knight, as Sir Archibald Napier's successor, in the first year of the reign of KING CHARLES I.]

I. LETTER,[2] *Mr Alexander Coluile, Juſtice-Depute, to Viſcount Annan.*[3] *Dec.* 20, 1622.

RIGHT HONORABLE,

YOUR LO. ſhall be advertiſſed that he who is preſentlie JUSTICE CLERC, (*the Lard of Ormeſtoun,*) is ſo afflicted with extreame aage, blindnes, and vther infirmities, that he is altogither diſinabled ather to valk abrod, or diſcharge his place; and by all appearance, is not long to ſurvive. And becawſe it concernes me ſo neir, that ſeruis HIS MA^TIE as Juſtice deput, to be veil or ewill yoked,[4] in cace it pleis God that I liwe, I haue adnentured thir few lynis, being confident of 3our lo. goodnes, that HIS MA^TIE, by 3our lo. informationn, micht be the better prepared aganis the importunitie of vnfitt ſutors[5] for that place (of Juſtice clerk), quhilk aucht nocht to be giwen to thois that ſutt[6] it, bot to thois that

[1] Usually applied to denote a hive or nest of wasps, wild bees, or hornets. [2] *Denmylne MSS.* Adv. Library. [3] Sir JOHN MURRAY, a *protegée* of the Earl of Morton, and a distinguished favourite at Court, was successively Gentleman of the Bedchamber, and Master of the Horse, &c. to James VI. He acquired great wealth and estates; and was created VISCOUNT OF ANNAND, and Lord Murray of Lochmaben; and afterwards EARL OF ANNANDALE, Mar. 13, 1624-5. [4] Well or ill yoked; having a good or bad partner, or coadjutor. [5] Suitors; applicants. [6] Petition for.

ar vorthie of it. And as the lywis of men ar mor pretious then their goods, fo lett the vorthines of him be refpected, to quhome the lywis of men ar to be trufted; for if he quho is to be inclofed with Aflyfors, (quha for the moft ar rud and ignorant,) depending much vpone THE (Lord Juftice) CLERC his informatioun; if he, I fay, be not a found confcientious man, and frie of baife bribrie, he may prowe a pernitious inftrument, and be the cawfe that iniquitie may be committed; as wee haue ȝit in memorie, of on THOMAS SCOT *of Abotifhall*, quho was Juftice Clerk to KING JAMES THE FYFT, of happie memorie, quho being ftrukin with a terror of confcience, at the hour of his death, for his ewill cariage in that place, dyed in difperatioun, crying, 'I am damned! I am damned!' ȝit among all vperis, ȝoung men, and men of great CLANNIS ar moft dangerous for that place. Ceacing farther to fafche ȝour lo. earis, and referring all to ȝour lo. prudence; vifhing, that, by a happie election of fuch ane Officiar, God may gett glorie, HIS MATIE contentment, and the people fecuritie, by getting right quhen thair lywes fhall be in queftion, and ȝour lo. praife and thankis for being a good inftrument. Thus, refting confident that ȝour lo. will tak my boldnes in good part, I reft,

Your lo. affectioned and humble feruitour,

EDR, 20 Dec. 1622. A. COLUILLE.

To the right honorable his fpeciall good lord, MY LORD VICOUNT OF ANNAN.

II. EXTRACT *from the Books of Adjournal, Dec. 2,* 1625.

(Dec. 2, 1625.)—SIR GEORGE ELPHINGSTOUN of Blythifwoid, knyt, ane of the Lordis of his Maiefteis Previe Counfall, producet ane Gift, grantit to him be our lait fouerane lord, James the faxt, of moft happie memorie, vnder his hienes Previe Seill, off THE OFFICES of 'CLERK of OUR JUSTICIARIE GENERALL, AND MAISTER OF CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther foleme Affembleis, quhair honourable Ceremoneis ar accuftomet and neceffar to be vfet, within this our faid Kingdome of Scotland.—Quhilkis Offices ar now vacand in our handis and at our gift and difpofitioun, be dimiffioun maid thairof in our handis be SIR ARCHIBALD NAPER of Merchiftoun, knyt, thefaurer deput of our faid kingdome of Scotland.' Dated 'AT BISSAME, the nyne and tuentie day of Auguft, the ȝeir of God 1624, and of our regnne the 58 and 22 ȝeiris.'

The faid Sir George gaif his aithe *de fideli adminiftratione* in the faid Clerkfchip of Jufticiarie, in prefence of the faid Juftice depute.

No. VII.

REMARKABLE EXAMINATIONS AND CONFESSIONS OF PERSONS ACCUSED OF WITCHCRAFT, SORCERY, &c.

[AMONG the circumstances which peculiarly characterize the earlier Criminal proceedings of SCOTLAND, as well as those of ENGLAND, FRANCE, and GERMANY, &c., none are more prominent than the unmitigated rigour with which the profession as well as the practice of Witchcraft, Sorcery, and Necromancy, were punished. The hecatombs of innocent victims, whose lives were sacrificed to satisfy the gloomy superstitions of Nations termed Christian and civilized, but

who, in reality, were only emerging from a state of semi-barbarism, sufficiently attest the justice of this observation.

After the period of the Reformation from Popery, the Legislators of those countries which had embraced the new Religion, seemed to vie with each other in the zeal which they manifested in 'rooting out from the land' every vestige of the professors of these 'works of darkness.' In Scotland, as the reader has already had ufficient opportunity of remarking, great exertions were made during the reign of KING JAMES VI, when hundreds of helpless creatures were destroyed, under form of law,—for those who were tried before THE HIGH COURT OF JUSTICIARY bore a very small proportion to the very great numbers who were tried and condemned by the LORDS OF REGALITIES, BARON BAILIES, and by the ROYAL COMMISSIONERS. A very striking fact, mentioned by *Baron Hume* in his valuable Commentaries,[1] may be here briefly noted, that 'no fewer than *fourteen* Commissions[2] for Trial of Witches were granted, for different quarters of the country, *in one sederunt*, of the 7th of November, 1661; which year seems to have been the most fertile period of this sort of accusation!' It is proper to remark, that such Commissioners had very ample powers granted to them; for their Commissions were expressly conceived for the examination and trial, &c. of so many persons, *nominatim*, and a large blank was commonly left for the insertion of such other persons as might be 'delaited,' or accused, during their sittings. Besides this, their jurisdiction extended over considerable districts of country. As one unhappy creature was almost universally induced to accuse *several others* of the same crime for which he or she was to suffer, and as the evidence taken in one Trial was held to be conclusive in other cases, where the pannels were thus proved to be 'notour Witches,' it was competent for these Commissioners to try any number of persons, and to 'justify them to the death;' a practice which they were by no means slack of performing.

Many very painful Trials for Witchcraft, &c. have already been laid before the reader; but perhaps there cannot be adduced a more touching proof of the nefarious wickedness which must have been perpetrated in Scotland, during the reign of KING JAMES VI, than the following memorandum, which is preserved by *Thomas, Earl of Haddington*, (a noted instrument of the King in all cases, of whatever description,) in his Minutes of Privy Council proceedings.[3] He relates, under date December 1, 1608,—'THE ERLE OF MAR declairit to THE COUNSALL, that fum wemen wer tane in *Broichtoun*, as WITCHES; and being

[1] HUME on *Punishment* for Crimes, II., 559. [2] Granted by the Lords of Privy Council.
[3] *Haddington MSS.*, A. 4, 22. Adv. Library. While *Sir Thomas Hamilton*, he held the great Offices of *Secretary of State, Lord Advocate, President of the College of Justice*, &c.; and in all of those stations forwarded his master's views with unremitting zeal and ability.

put to ane Aſſyſe,[1] and convict, albeit thay perſeverit conſtant in thair denyell to the end, ȝit *thay wer* BURNIT QUICK,[2] *eftir ſic ane crewell maner, that ſum of thame deit in deſpair, renunceand*[3] *and blaſphemeand; and vtheris,* HALF BRUNT, *brak out of the fyre, and wes caſt in* QUICK *in it agane, quhill*[4] *thay* wer brunt to þe deid.'

It is hardly necessary to remind the reader, that matters were no better in ENGLAND; where, as he must perfectly recollect, the most shocking atrocities were perpetrated, during the reigns of CHARLES I and CHARLES II, and also under the Puritans of OLIVER CROMWELL'S time. The infamous proceedings, publicly authorized, of HOPKINS *the Witch-finder*, and other worthless impostors, who pretended to be able, by certain cruel means practised by them, to detect real and counterfeit Witches, are also well known, and are highly calculated to bring discredit on the judicial proceedings of any country. Upon the evidence of these wretches, added to that of the ignorant and superstitious peasantry, and of the equally superstitious Clergy of those times, the lives of hundreds were wantonly sacrificed, to satisfy their diseased appetite for the marvellous; while other misguided individuals, conscientiously no doubt, thought, that by acting thus, they were 'doing God service.'

SIR WALTER SCOTT having so largely discussed this extraordinary subject in his recent work on Demonology and Witchcraft,[5] it would be as presumptuous as it is unnecessary for the Editor to enter farther into the matter. In that curious and able work, the learned author, in his usual felicitous style, notices numerous Examinations and Confessions of persons accused of Witchcraft, in Scotland, in the sixteenth and seventeenth centuries. Of these, the most remarkable documents unquestionably are the Confessions of ISSOBELL GOWDIE and of JANET BREADHEAD; which, indeed, may safely be pronounced to be by far the most *unique* and wonderful, in the Records of this, and perhaps of any other country. The Editor has been induced, in compliance with the repeated desire of literary friends, contrary to his own private opinion, to annex to this work the CONFESSIONS of these unhappy women, and a few other similar EXAMINATIONS. Such declarations were commonly taken before Presbyteries, or certain Special Commissioners, who usually ranked among their number the leading Clergy of those districts where their hapless victims resided. The details of all such cases, and, in particular, those which are now annexed, are repulsive and shocking to every well-regulated mind; but, as recording the superstitions and crimes common at the period in question to all the civilized

[1] Before the Baron Bailie of the Regality of BROUGHTON, near Edinburgh; one of the most extensive jurisdictions, of that description, in Scotland. [2] ALIVE; *i. e.* without having been previously '*wirreit*,' or strangled. [3] Renouncing their baptism. [4] Until. [5] LETTERS on Demonology and Witchcraft, by *Sir Walter Scott, Bart.* Lond. 1830.

nations of Europe, they will by many be deemed, in some measure at least, of historical importance; although at same time, it must be confessed, they afford a lamentable exhibition of the human mind, at its lowest ebb of degradation.]

I. Deposition *of John Kincaid (Witch-finder),*[1] *relative to the Devil's mark found on Patrik Watſon and Manie Halieburton.*[2]

At Dirlton,[3] . . . . . of . . . . . ȝeiris. The quhilk day, in preſence of All(exan)der Levingtone of (Salt)coitis, James Borthuik, Chalmerlane of Dirlton, Johne Stalker, bailȝie thair, James Foirman, Drem, Mr James Acheſoun, in North Beruik, and Williame Daliell, notar, Patrik (Wat)son, in Weſt Fentoun, and Menie Hallyburton, his ſpous, bruited and long ſuſpect (of) Witchcraft, of thair awne fre-will, vncompellit, heiring that I, *Johne Kincaid,* vnder ſubſcryvand, wes in the toune of *Dirltone,* and had ſome ſkill and dexteritie in trying of the Divellis *marke,* in the perſonis of ſuch as wer ſuſpect to be Witches, came to *the Broadhall,* in *the Caſtell of Dirlton,* and deſyrit me, the ſaid *Jo. Kincaid,* to vſe my tryall of thame, as I had done on vtheris; whilk when I had done, I fand *the Divellis marke* vpon the bakſyde of þe ſaid Patrik Watson, a little wnder the point of his left ſhoulder, and vpon the left ſyde of the ſaid Menie Halliburton hir neck, a little aboue hir left ſhoulder; whairof thay war not ſenſible, nether came furth þairof any bloode, efter I had tryed the ſamen als exactlie as euer I did any vthers. This I teſtifie to be of veritie, vpone my credite and conſcience. In witnes quhairof, I have ſubſcryvit thir preſentis with my hand, day and place foirſaid, beſoir thir witneſſis aboue ſpecifeit.

(Sic ſubſcribitur.) J. K. Alex. Levingtone, witneſs. Ja. Borthuike, witnes. Johnne Stalker, witnes. James Forman, witnes. M. J. Acheſone, witnes. W. Daliell, witnes.

(*Indorſed.*) Teſtificat of J(ohnne Kincaid,) finding the witches mark vpone Manie Haliburtounne.

II. Confession *of Manie Haliburton.*[4]

At Dirltoun, the [5]. . . . . of . . . . , 1649. In preſence of Johne (Stalker) bailȝie of Dirlton, James Levington, thair, Jo^n . . . . . in Lawhill, thair, James Speir, Richard Ferguſſon, Wa. Hanady, and Wa. Daliell. Compeirit Manie Halliburton, priſoner within the *Caſtell of Dirlton,* ſuſpect of the cryme of Witchcraft, dilaited guiltie be Agnes Clerkson, lait ſufferrar for the ſaid cryme, as alſo be Patrik Watsone, ſpous to the ſaid Menie, who lykevyſe ſufferit thairfoir; and confeſſit, that auchtein yeir ſyne, or thairby, hir dochtir being ſeik, ſcho firſt ſent for *Patrik Cryſtiſone in Abirladie,* to cum and cure hir dochter, and he refuiſing, went hirſelff for him, who refuſed to cure hir; and within [6]. . . . . dayis thairefter came the devill, in licknes of a man, to hir hous, calling himſelff a phiſition, and ſaid to hir, that he had goode ſalves (and namelie oylipek[7]) whairwith he wold cure hir dochtir; and aggrieing with him for ſome of his ſalves, quhilk he gave hir, ſho gave him tuo Inglis ſhillingis: He than depairted, and promiſed to come agane within eight dayes, whilk accordinglie he did; bot or[8] he went away the firſt tyme, ſhe gave him milk and breade; and *Patrik Watſone* comeing in, he ſent for a pynt of Ale: Bot at the ſecond comeing, he ſtayit all night, and vpone the morne airlie (*Patrik* being furth) in came the Divell and lay doun with hir, (ſcho being ȝit in bed,) and had carnall copulatioun with hir, his nature being cold: He deſyreit hir to renunce Chriſt and hir baptiſme, and become his ſervand; quhilk ſcho did: And ſayes, that hir dochter had

[1] From Original, in General Register House, Edinburgh. [2] He is elsewhere designed 'the commoun pricker.' [3] Obliterated in Orig. [4] From Orig. Gen. Register House. [5] Obliterated. [6] Left blank in Orig. [7] Oil of spike or spikenard. [8] Ere; before.

the wyte[1] of all hir wicid(nefs);[2] wiffing fho had nevir bene borne.—THIS Depofition wes renewed, in all the particulars, by the faid *Manie*, in the forfaid place, on Sunday the firft of Julij, 1649, before Alex^r Levingtoun of Saltcottis, James [3]. . . . . , ... , Johne Stalker, ... , Wm Daliell, and Mr Jo^n McGhill, minifter at Dirltoun.

M. J. MAKGHILL, ALEX. LEVINGTONE, witnes; J. BORTHUIK, JAMES LAUDER, JOHNNE STALKER, W. DALIEL, WILLIAME DALIELL, WALTER MARSHALL.

Jul. 2, AT HADINTOUN. Whilk day, THE PRESBITERIE, having red and confidered the former DEPOSITIONS and CONFESSION of *Manie Haliburton*, ffind the famyne a fufficient ground for futing[4] the Judge competent to grant a Commiffion for trying and judging her according to Law.

J. STIRLING, Cl^k.

III. ACT OF PRIVY COUNCIL *anent Geillis Johnnftoun, fufpected of the crime of Witchcraft.*[5]

ANENT our fouerane lordis Letteris, reafit at the inftance of GELIS JOHNNSTOUN, relict of vmquhill Johnne Duncane in Muffilburgh, makand mentioun, That quhair fome malitious perfonis, hir vnfreindis, haueing dilaitit her to THE PRESBITERIE OF DALKEITH, as a perfon fufpect of WITCHCRAFT, the faid Prifbiterie hes thairvpone convenit hir before thame, and hes haldin hir in proces before them, thir fevin oulkis[6] bigane; albeit it be of veritie, that the faid complenair is ane honneft woman, who hes levit thir threttie yeiris in the toun of Muffilburgh, in gude fame, credeit, and reputatioun; and wes nevir fufpected nor bruted[7] with ony fuche develifche and deteftabill doingis; and fcho hes at all tymes prefentit hir felff before the faid PRISBITERIE, quhan thay callit for her felff to thair tryall-examinationis, and quhatfumeuir forme of procedoure thay pleafit vfe aganis hir: And althocht the cryme of Witchcraft be ane of the heich pointis of the Croune, proper to be tryit before his Maiefteis Juftice and his deputis, and quhairin the faid PRISBITERIE can have no warrand, auctoritie, nor jurifdictioun to cognofce or determine, neuirtheles, thay continewalie fafche[8] the faid complenair with citationis and fummondis to compeir before thame, purpoiflie, as appeiris, to bring hir fame, credite, and reputatioun in queftioun, and to lay vpoun hir this foull and havie fclander of fa deteftable a cryme, quhairof fcho is moft innocent; and gif thay had ony prefumptionis aganis the complenair of hir guiltynes of the faid cryme, thay fould haue gevin informatioun thairof, outhir[9] to THE LORD OF REGALITIE quhair fcho duellis, before quhome the faid complenair hes fund cautioun to be anfuerable for this fame deid, quhanevir fcho falbe callit; or then, to his heynes JUSTICE GENERALL and his deputis; and fould have concurrit, be thair informatioun, to the perfute of hir, and fould not haue vfit fuche a prepofterous forme of proceiding before thame felffis, quhich can produce na kynd of fentence nor determinatioun. IN refpect quhairof, THE MINISTERIS of the faid PRISBITERIE aucht and fould be difchargit of all proceiding aganis the faid complenair, in the mater above writtin, for the cauffis foirfaidis. AND anent the charge gevin to Mr Andro Blakhall, Minifter at Innerefk; Mr Patrik Turnour, Minifter at Borthuik; Mr William Penman, Minifter at Creichtoun; Nathaniell Harlaw, Minifter at Ormeftoun; Mr Alexander Ambroife, Minifter at Newbotle; Mr Johne Nymbill, Minifter at Cranftoun; and Mr George Ramfay, Minifter at Leffwaid; all MINISTERIS OF THE PRESBITERIE OF DALKEITH, being convenit for the tyme within the Kirk of Dalkeith, to haue compeirit be ane or tua of thair number, fufficientlie inftructit, for the reft, before THE LORDIS OF SECRITE COUNSALE, this prefent day, to haue hard and fene thame difchairgit of all proceiding aganis the faid complenar in the mater foirfaid, and of thair officeis in that pairt: Lyke as, at mair lenth is contenit in the faidis Letteris, executiounis, and indorfationis thairof. QUHILKIS being callit, and the faid perfewar com-

[1] Blame. [2] Wickedness. [3] Obliterated. [4] Suiting; petitioning. [5] *Acta Secreti Consilii*, General Register House, Edinburgh. [6] Weeks. [7] Reported. [8] Trouble. O. Fr. *fascher*. [9] Either.

peirand, be William Duncane hir ſone, and Mr George Ramſay, Moderatour of the Preſbiterie of Dalkeith; Nathaniell Harlaw, Miniſter at Ormeſtoun; Mr Patrik Turnour, Miniſter at Borthuik; and Mr William Penman, Miniſter at Creichtoun; with ſome vtheris of the ſaid Priſbiterie being perſonallie preſent, the reaſſonis and allegationis of the pairteis preſent being hard and conſiderit be the Lordis of Secrite Counſale, and thay ryplie adnifit thairwith, the Lordis of Secrite Counſale DISCHAIRGEIS *the Miniſteris of the ſaid Preſbiterie* of all proceiding aganis the ſaid Gelis Johnnſtoun, in the mater foirſaid, and of all thair officeis in that pairt; and REMITTIS the ſaid Geillis to be perſewit and tryit, outher before the Juſtice-Generall and his deputis, or before the Lord of the Regalitie of Dunfermling, as accordis of the Law; but[1] preindice alwyſe to the ſaid *Preſbiterie* to vſe all ordinar and lauchfull meanis, quhairby thay may get tryall, be vtheris, of the ſaid *Gelis Johnnſtoun* hir practiceis and dealing in the ſaid cryme of Witchcraft; and to gif informatioun thairof to the ſaid Juſtice Generall and his deputis, or to the Lord of the Regalitie of Dunfermling and his deputis, before quhome juſtice ſalbe miniſtrat, conforme to the lawis of this realme.

IV. CONFESSION *of Jonet Watſone; and Notices relative to Chriſtiane Wilſone and Jonet Paiſtoun, all accuſed of Witchcraft, June* 166 1.[2]

JONET WATSONE confeſſed, that in Apryle laſt bypaſt, or thairby, ſhoe being at the buriell of *the Lady Dalhouſie*,[3] ther was ane rix-dollar given to *Jean Bughane*, to be pairted among a certain number of poore folks, wherof ſhoe was one. And the ſaid *Jean Bughane* did run away with the ſaid money, ſo that ſchoe gott no pairt of it. And ſchoe come home to hir awne houſe, being verrie grieved and angrie at it, wiſhed to have a mendſe of *Jean Bughane*. Vpone the which THE DEIVILL apeired vnto her, in the liknes of *ane prettie boy, in grein clothes;* and aſked, 'What aild her? And what amendſe ſhoe wold have, he ſhould give her.' And at that tyme THE DEIVIL gaive hir his markis; and went away from her in the liknes of *ane blak doug:*—And conſtantlie, for three dayis thairefter, ther was *a great bee* come to her; and vpone ane morning, when ſhoe was cheinging her ſchirt, it did ſit down vpone her ſhoulder, (ſhoe being naked,) wher ſhoe had one of the markis.

As alſo, abont the tyme of the laſt Baille-ffyre night, ſhoe was at a Meitting in *Newtoun-dein* with THE DEAVILL, who had *grein cloathes* vpone him, and ane blak hatt vpone his head; wher ſchoe denyd Chriſt, and took her ſelf to be the ſervant of THE DEIVILL. Wherfor ſhoe acknoweledged that ſchoe was, from her heart, ſorrowfull for the doeing of it. And likewiſe, he then gave her a new name, and called her 'WEILL-DANCING JENOT'—and promiſed her money at the nixt Meitting.

And alſo, that vpone ane vther night, THE DEIVILL was verie heavie vpon her in her bed. As alſo, ſchoe confeſſed that *Beſſie Moffit, Elſpeth Grahame*, and *Jenot Mikeljohn* come to her houſe, and tooke her away to that Meating; when they all danced togither: At which tyme, when ſchoe renunced her baptiſme, THE DEIVILL laid his hand vpon her head, and bad her 'give all ower to him that was vnder his hand,' and ſhoe did ſo. Quhilk haill premiſſes ſhoe confeſſed, in preſens of the vnder ſubſcryvers, without compulſione.

W. CALDERWOOD, (Miniſter of Dalkeith,) WILLIAME SCOTT, (Bailie of Dalkeith.)
AND. MACMILLONE, witnes. ROB[T] HARDIE, witnes. JOHNE FOORD, witnes.
HENRIE WILSONE, witnes. JA. CALDERWOOD, witnes. ALEX. A: D DICKSONES mark.
WILLIAM BRYSON, witnes. JA. VTERSIDE, witnes.

[1] Without. [2] Original in *MS. Coll. of Society of Antiquaries of Scotland.* This Proof was led under a Commission, June 6, 1661, 'direct be THE KINGIS MAIESTIE, with consent of the Estaitis of Parliament,' to Sir William Murray of Newtoun, Sir James Richardson of Smeiton, Patrick Scott of Langschaw, Major John Biggar of Woolmot, &c.; who examined a great variety of WITCHES. Their CONFESSIONS, however, are uninteresting and commonplace, with the exception of this and the other Extracts which follow. [3] LADY MARGARET CARNEGIE, daughter of David, Earl of Southesk, spouse of *William, Lord Ramsay*, created *Earl of Dalhousie*, June 29, 1633.

V. Deposition *as to the Devil carrying off a Witch in a Whirlwind, &c.*

At Dalkeith, the 10 of Junii, 1661.—The quhilk day, William Scott, Bailiffe, haveing ordained ſome of the neighbours in the toune of Dalkeith to be in redines, the morrow eftir, for guardeing of Christiane Wilsone, a Witch, to Nidrie, to be confronted their by ane vther Witche; and Johne Steivin, being one of the number ordained to be in redines, ſaid to Jennot Cooke,[1] that he wes 'goeing the morrow to convoy the ſaid Christiane to Nidrie,' as aforſaid, and that he wold goe and mak his gun cleane, for that purpoſe; to the which Jennot anſweired, 'Will not yow think it a ſport, if the Deivill raiſe a whirrell of wind, and tak her away from among yow by the gette[2] the morrow!' And it fell out, that in paſſing a burne,[3] when they wer nigh Nidrie, their aroſe ſutche a ſudden tempeſt of wind, which was like to blow the compagnie off their foot—and it did blow the ſaid Chriſtiane Wilſone down in the water . . . .[4], ſo that for a long tyme they could not gett her vp againe—it being a faire and calme day, both befor and efter. Witnesses, Johne Stevin, James Wilſone, candill maker, Thomas Richardſone, wright, Beſſie Waker, Jonett Bruntoun, and James Blaikie, baxter.[5] Johne Stiwene, witnes. James I. W. Wilſones mark.

VI. Deposition *of John Kincaid, in Tranent, 'the comon pricker,' as to finding the Devil's mark on Jonet Paiſtoun.*

Dalkeith, 17 Junij, 1661.—The quhilk day, Jonet Paistoun, being dilaitit, as is aforſaid, the Magistrat and Minister cauſed *Johne Kinkaid*,[6] in Tranent, *the comon pricker*, to prik her —and found tuo marks wpon hir, which he called the Devill his markis, which apeared indeid to be ſo, for ſhoe did nather find the prein[7] when it was put into any of the ſaid markis, nor did they blood when they were takin out again. And quhan ſhoe was aſked, 'Quhair ſhoe thoght the preins wer put in?' Shoe pointed at a pairt of hir body diſtant from the place quhair the preins wer put in —they being preins of *thrie inches*, or þairabout, in lenth. Quhilk *Johne Kinkaid* declairis upon his oath, and verifies by his ſubſcription to be true. Witnesses þairto, Mr Wm Calderwood, Miniſter at Dalkeith, and Williame Scott, Bailȝe: Martin Stevinſone and Thomas Calderwood, Elders; Major Archibald Waddell, Johne Hunter, David Douglas.

I. K. W. Calderwood, Miniſter. Williame Scott, Bailȝie.
Martin Stevensone, Elder. Thomas Calderwood, Elder.

VII. Confessions *of Iſſobell Gowdie, ſpous to John Gilbert, in Lochloy.*

(1.) Issobell Gowdies first Confession.

At Aulderne,[8] the threttein day of Aprill, 1662 yeiris. In presence of Master Harie Forbes, Miniſter of the Goſpell at Aulderne; William Dallas of Cantrey, Shereffe deput of the ſhereffdom of Nairne; Thomas Dunbar of Graing; Alexander Brodie, Yr of Leathin; Alexander Dunbar of Boath; James Dunbar, appeirant therof; Henrie Hay of Brightmanney; Hew Hay of Newtowne; William Dunbar of Clune; and David Smith, and Johne Weir, in Auldern; Witnesses to THE CONFESSION efter ſpecifeit, ſpokin furth of the mouth of Issobell Gowdie, *ſpous to Johne Gilbert, in Lochloy.*

The quhilk day, in preſence of me, Johne Innes, *Notar Publict*, and Witneſſes abownamet, all vnder ſubſcrywand, the ſaid Issobell Gowdie, appeiring penetent for hir haynows ſinnes of Witch-

[1] Another Confessing Witch. [2] By the way. [3] Rivulet. [4] Obliterated—but it looks like '*streyme.*' [5] Baker. [6] The counterpart of the English *Mathew Hopkins*, the Witch-Finder, whose villainous impostures deprived many poor creatures of their wretched existence. [7] A long pin, or bodkin, which this fellow used for pricking. [8] A Parish and Burgh of Barony in the Shire of Nairn, on the Murray Frith.

craft, and that ſho haid bein ower lang in that ſervico; without ony compulſitouris,[1] proceidit in hir CONFESSIONE, in maner efter following, to wit. As I wes goeing betuix the townes[2] of *Drumdewin* and *the Headis*, I met with THE DIVELL, and ther covenanted, in a maner, with him; and I promeiſit to meit him, in the night time, in *the Kirk of Aulderne;* quhilk I did. And the firſt thing I did ther that night, I denyed my baptiſme, and did put the on of my handis to the crowne of my head and the vther to the ſole of my foot, and then renuncet all betuixt my two handis, ower to *the Divell.* He wes in the Readeris daſk, and a blak book in his hand.[3] *Margret Brodie*, in Aulderne, held me vp to *the Divell* to be baptiſed be him; and he marked me in the ſhowlder, and ſuked owt my blood at that mark, and ſpowted it in his hand, and, ſprinkling it on my head, ſaid, '*I baptiſe thé, JANET, in my awin name!*' And within a quhill we all remoowed. The nixt tym that I met with him ves in *the New Wardis of Inſhoch*, and haid carnall cowpulation and dealling with me. He wes a meikle, blak, roch[4] man, werie cold; and I found his nature als cold within me as ſpring-wall-water. Somtymes he haid buitis and ſometymes ſhoes on his foot;[5] but ſtill his foot ar forked and cloven. He vold be ſomtymes with ws lyk a dear, or a rae. *Johne Taylor* and *Janet Breadhead*, his vyff,[6] in *Belmakeith*, ... *Dowglas*, and I my ſelf, met in *the Kirk-yaird of Nairne*, and ve raiſed an vnchriſtened child owt of its greaff; and at the end of *Breadleyis* corn-field-land, juſt oppoſit to *the Milne of Nairne*, we took the ſaid child, with the naillis[7] of our fingeris and toes, pikles of all ſortis of grain, and blaidis of keall,[8] and haked[9] thaim all verie ſmall, mixed altogither; and did put a pairt therof among the mukheapes[10] of *Breadleyes* landis, and therby took away the ffruit of his cornes, &c.; and we pairted it among two of our COEVENS.[11] Whan we tak cornes at *Lambes*,[12] we tak bot abowt two ſheawes, whan the cornes ar full; or two ſtokis of keall, or therby, and that giwes ws the fruit of the corn-land, or keall-yaird, whair they grew:[13] And it may be, we will keip yt while *Yewll* or *Pace*,[14] and than devyd it amongſt ws. Ther ar threttein perſones in my COVEN.[15]

The laſt tyme that owr COVEN met, we, and an vther COVEN, wer dauncing at *the Hill of Earlſeat;* and befor that, betwixt *Moynes* and *Bowgholl;* and befor that we ves beyond *the Meikle-burne;* and the vther COVEN being at *the Downie-hillis*, we went from beyond *the Meikle-burne*, and went befyd them, to the howſſis at *the Wood-end of Inſhoch;* and within a qwhyll went hom to our howſſis. Befor *Candlmas*, we went be-eaſt *Kinloſſe*, and ther we yoaked an plewghe of paddokis.[16] THE DIVELL held the plewgh, and *Johne Younge* in *Mebeſtowne*, our Officer, did drywe the plewghe. Paddokis did draw the plewgh, as oxen; qwickens wer ſowmes,[17] a riglen's horne wes a cowter,[18] and an piece of an riglen's horne wes an ſok. We went two ſeuerall tymes abowt; and all we of the COEVEN went ſtill wp and downe with the plewghe, prayeing to THE DIVELL for the fruit of that land, and that thiſtles and brieris might grow ther.

When we goe to any hons,[19] we tak meat and drink; and we fill wp the barrellis with owr oven[20]

[1] Indicating, in the outset, that no TORTURE or compulsion had been resorted to, for the purpose of extorting Confession; but that she came forward, and *voluntarily* made her Declaration, bewailing her former offences. [2] Farmsteadings. [3] It is a singular circumstance, that in almost all the CONFESSIONS of Witches, their initiation, and many of their meetings, are said to have taken place within CHURCHES, Churchyards, and consecrated ground; and a certain ritual, in imitation, or mockery, of the forms of the Church, is uniformly said to have been gone through. [4] Rough; hairy; *hirsute.* [5] Throughout this Confession, *foot* is used for *feet.* [6] See her Confession, which follows this, (No. VIII.) [7] Parings of the nails. In such incantations, the nails and joints, &c. of dead men were commonly made use of. [8] *Kail-blades;* the leaves of colewort. [9] *Hacked;* chopped. [10] Dung-heaps; *middens.* [11] Companies; Witches' Conventicles. Perhaps from Lat. *convenire.* The word *cove* is still in use (in the Gipsy, flash, or slang Vocabulary) as an associate, *chum*, or companion, &c. [12] Lammas: 1st August. [13] This symbolical mode of taking the fruit, crop, or produce of land, &c., is frequently alluded to in Witch-Trials. The soil *apparently* bore only straw and empty ears; but the real produce was, in due season, conveyed to the barns of the enchanter. The milk of a dairy was taken by means of a hair *tether*, rope, or halter, passing under the door, and attached to one of the stalls where the cattle stood, &c. The Witch procured the entire produce by '*milking the tether!*' Another method is afterwards recited in this CONFESSION. [14] Until Christmas or Easter. [15] The number *thirteen* is still proverbially called '*the Deil's dozen*,' in Scotland. [16] Yoked a plough of frogs. [17] Dog-grass, or *quick*-grass, served for *sowmes* or *soams;* being the traces, chains, or iron links, by which, of old, the oxen were yoked to the plough. The *sowme* (*soyme*) was fastened by a hook to the *soule* or *sole* (swivel.) [18] The coulter of the plough was formed of the horn of a half-castrated ram, called a *riglen*; q. d. *a ridgel-ram.* [19] Enter by stealth. [20] Awin; *own.*

pifh again; and we put boofomes[1] in our beds with our hufbandis, till ve return again to them. We wer in *the Earle of Murreyes*[2] hous in *Dernvay*, and ve gott anewgh ther, and did eat and drink of the beft, and browght pairt with ws. We went in at the windowes. I haid a little horfe, and wold fay, 'HORSE AND HATTOCK, IN THE DIVELLIS NAME!'[3] And than ve vold flie away, quhair ve vold, be ewin[4] as ftrawes wold flie wpon an hie-way. We will flie lyk ftrawes quhan we pleas; wild-ftrawes and corne-ftrawes wilbe horfes to ws, an[5] ve put thaim betwixt our foot, and fay, 'HORSE AND HATTOK, IN THE DIVELLIS nam!' An quhan any fies thes ftrawes in a whirlewind, and doe not fanctifie them felues,[6] we may fhoot them dead at owr pleafour. Any that ar fhot be vs, their fowell will goe to Hevin, bot ther bodies remains with ws, and will flie as horfis to ws, als fmall as ftrawes.[7]

I was in *the Downie-hillis*, and got meat ther from THE QWEIN OF FEARRIE, mor than I could eat. *The Qwein of Fearrie* is brawlie clothed in whyt linens, and in whyt and browne cloathes, &c.; and THE KING OF FEARRIE is a braw man, weill favoured, and broad faced, &c.[8] Ther wes elf-bullis rowtting and fkoylling wp and downe thair, and affrighted me.[9]

[1] *Besoms;* brooms. [2] Alexander Stewart, *fourth* Earl of Moray. [3] THE following remarkable circumstances were communicated to the ingenious *John Aubrey, Esq.*, F.R.S., by one *Stewart*, a tutor in the family of JAMES, second LORD DUFFUS; from whose recital, *Stewart* states, he had it, and that his lordship had it from his father, *Alexander*, first *Lord Duffus*, who had, in like manner, heard the tradition from *William Sutherland of Duffus*, grandfather of *James, Lord Duffus*, who died about the year 1626. It closely corresponds with the particulars contained in the Depositions of *Isobel Gowdie* and *Janet Breadhead*, in reference to this branch of FAIRY SUPERSTITION. As *Aubrey's* work is now exceedingly scarce, little apology is required for quoting the interesting communication, which he has, fortunately, preserved at length:—

'As soon as I read your letter of May 24, (1694,) I called to mind a story which I heard long ago, concerning one of the LORD DUFFUS (in *the shire of Murray*) his predecessors; of whom it is reported that, upon a time, when he was walking abroad in the fields, near to his own house, he was suddenly carried away, and found the next day at *Paris*, in THE FRENCH KING'S cellar, with a silver cup in his hand. That, being brought into THE KING'S presence, and questioned by him, "Who he was?"—and "how he came thither?" He told his name, his country, and the place of his residence; and that on such a day of the month (which proved to be the day immediately preceding), being in the fields, he heard the noise of a whirlwind, and of voices crying "HORSE AND HATTOCK!" (this is the word which THE FAIRIES are said to use when they remove from any place;) whereupon he cried "HORSE AND HATTOCK!" also; and was immediately caught up and transported through the air, by THE FAIRIES, to that place: Where, after he had drank heartily, he fell asleep, and before he awoke, the rest of the company were gone, and had left him in the posture wherein he was found. It is said THE KING gave him the cup which was found in his hand, and dismissed him.

'This story (if it could be sufficiently attested) would be a noble instance for your purpose; for which cause I was at some pains to enquire into the truth of it, and found the means to get the present *Lord Duffus's* opinion thereof; which shortly is, that there has been and is such a tradition; but he thinks it fabulous. This account of it his Lordship had from his father, who told him that he had it from his father, the present Lord's grandfather. *There is yet an old silver cup in his lordship's possession still, which is called* "THE FAIRY CUP,"—but has nothing engrsven upon it except the arms of the Family.

'The gentleman by whose means I came to know the *Lord Duffus's* sentiment of the foregoing story, being tutor to his lordship's eldest son, told me another little passage of the same nature, whereof he was an eye-witness. He reports, that when he was a boy at school, in *the town of* FORRES, yet not so young but that he had years and capacity both to observe and remember that which fell out, he and his school-fellows were, upon a time, whipping their tops in *the Churchyard*, before the door of *the Church*. Though the day was calm, they heard a noise of a wind, and, at some distance, saw the small dust begin to arise and turn round; which motion continued advancing till it came to the place where they were: Whereupon they began to bless themselves. But one of their number (being, it seems, a little more bold and confident than his companions) said, "HORSE AND HATTOCK WITH MY TOP!" And immediately they saw the top lifted up from the ground, but could not see what way it was carried, by reason of a cloud of dust which was raised at the same time. They sought for the top all about the place where it was taken up, but in vain; and it was found afterwards in the Churchyard, on the other side of the Church. *Mr Steward* (so is the gentleman called) declared to me that he had a perfect remembrance of this matter.'—*Aubrey's Miscellanies*, p. 209.

[4] Like; even as; in like manner as. [5] *And;* if. [6] The children in the kirkyard of Forres (see the preceding Note on HORSE AND HATTOCK) appear to have been adepts in this branch of the Fairy creed; which was, no doubt, familiar to all classes of the peasantry of Scotland, as numerous traces of it are to be found in various districts, at the remotest distance from each other. [7] The above details are, perhaps, in all respects, the most extraordinary in the history of WITCHCRAFT of this or of any other country. Any comment would only weaken the effect of such very remarkable descriptions. [8] It is a thousand pities that the learned Examinators have so piously declined indulging the world with the detailed description of these illustrious personages. Under the singularly descriptive powers of *Issobel Gowdie*, much might have been learned of FAIRY-LAND and its Mythology. [9] It is evident that *Issobel's* gossipping had again been cut short here, as *irrelevant*. Not so the more objectionable parts of her Confession, which were obviously drawn out of her, and listened to with the utmost complacency by her reverend inquisitors.

When we tak away any cowes milk, we pull the tow, and twyn it and plaitt it in the vrong way, in *the Divellis* name; and we draw the tedder (ſua maid) in betuixt the cowes hinder foot,[1] and owt betuixt the cowes forder foot, in *the Divellis* name; and therby tak with ws the kowes milk. We tak ſheips milk ewin ſo. The way to tak or giev bak the milk again, is to cut that tedder. Whan we tak away the ſtrenth of anie perſones eall,[2] and giwes it to an vther, we tak a litle qwantitie owt of each barrell or ſtand of eall, and puts it in a ſtowp, in *the Divellis* nam; and, in his nam, with owr awin handis, puttis it amongſt an vtheris eall, and giwes her the ſtrenth and ſubſtance and heall of hir neightbouris eall. And to keip the eall from ws, that we haue no power of it, is to ſanctifie it veill. We get all this power from *the Divell;* and when ve ſeik it from him, ve call him 'owr LORD!'

Johne Taylor and *Janet Breadhead*, his wyff, in Bellnakeith, *Beſſie Wilſone*, in Aulderne, and *Margret Wilſone*, ſpows to *Donald Callam* in Aulderne, and I, maid an pictur of clay, to diſtroy *the Laird of Parkis* meall[3] children. *Johne Taylor* browght hom the clay, in his plaid newk;[4] his wyff brak it verie ſmall, lyk meall,[5] and ſifted it with a ſiew,[6] and powred in water among it, in *the Divellis* nam, and vrought it werie ſore, lyk rye-bowt;[7] and maid of it a pictur of *the Lairdis* ſones. It haid all the pairtis and merkis of a child, ſuch as heid, eyes, noſe, handis, foot, mowth, and litle lippes. It wanted no mark of a child; and the handis of it folded down by its ſydes. It was lyk a pow,[8] or a flain gryce.[9] We laid the face of it to the fyre, till it ſtrakned;[10] and a cleir fyre round abowt it, till it ves read lyk a cole.[11] After that, we wold roſt it now and then; each other day[12] ther wold be an piece of it weill roſten. *The Laird of Parkis* heall maill children by it ar to ſuffer, if it be not gotten and brokin, als weill as thes that ar borne and dead alreadie. It ves ſtill putt in and taken out of the fyre, in *the Divellis* name. It wes hung wp wpon an knag. It is yet in *Johne Taylor's* hows, and it hes a cradle of clay abowt it. Onlie *Johne Taylor* and his wyff, *Janet Breadhead*, *Beſſie* and *Margret Wilſones* in Aulderne, and *Margret Brodie*, thair, and I, wer onlie at the making of it. All the multitud of our number of WITCHES, of all the COEVENS, kent[13] all of it, at owr nixt meitting after it was maid. And *the Witches* yet that ar vntaken, haw thair awin poweris, and owr poweris quhilk we haid befor we wer takin, both.[14] Bot now I haw no power at all.

Margret Kyllie, in . . . . . ., is on of the vther COVEN, *Meſſie Hirdall*, ſpous to *Allexander Roſs*, in Lonheid, is on of thaim; hir ſkin is fyrie. *Iſſobell Nicoll*, in Lochley, is on of my COEVEN. *Allexander Elder*, in Earleſeat, and *Janet Finlay*, his ſpows, ar of my COEVENS. *Margret Haſbein*, in Moynes, is on; *Margrat Brodie*, in Aulderne, *Beſſie* and *Margrat Wilſones*, thair, and *Jean Marten*, ther, and *Elſpet Niſhie*, ſpows to *Johne Mathow*, ther, ar of my COVEN. The ſaid *Jean Mäirten* is MAIDEN[15] of owr COVEN. *Johne Yowng*, in Mebeſtowne, is OFFICER to owr COEVEN.

Elſpet Chiſholme and *Iſſobell More*, in Aulderne, *Magie Brodie*, ..., and I, went in to *Allexander Cumings* litt-hows,[16] in Aulderne. I went in, in the likenes of a kea,[17] the ſaid *Elſpet Chiſolm* wes in the ſhape of a catt. *Iſobell Mor* wes a hair, and *Magie Brodie* a catt, and . . . . . .[18] We took a threid of each cullor of yairne that wes in the ſaid *Allexander Cuming* his litt-fatt,[19] and did caſt thrie knots on each threid, in *the Divellis* name; and did put the thriedis in the fatt, witherſones[20] abowt in the fatt, in *the Divellis* name; and thairby took the heall ſtrenth of the fatt away,

[1] Feet. [2] Strong ale. [3] Male. [4] In the nook, or corner, of his plaid. [5] Pounded, or powdered it, like meal. [6] To make the plaster fine, and free from earthy particles. [7] Probably a sort of stir-about, or hasty-pudding, made of rye-flour. [8] In another Deposition it is thus expressed, 'lyk a *pow or feadge*.' A *feadge* was a sort of *scone*, or roll, of a pretty large size. Perhaps this term signifies, as large as the quantity of dough or paste necessary for making this kind of bread. [9] A flayed sucking pig, after being scalded and scraped. [10] Shrivelled with the heat. [11] Red like a coal. [12] Each alternate day. [13] Knew. [14] This is something new in Witch stories, and lets in additional light on these charms. [15] Each Coven appears to have had an OFFICER for the men, and a MAIDEN for the women; but whether the province of these personages was to preside over them, or to act as messengers, to call them together, does not seem so certain. [16] Dye-house. [17] Jackdaw. [18] This and the preceding spaces are left blank in the Deposition. [19] Dying-vat. [20] *Widdershins*, contrary to the direction and ordinary course of the sun.

that it could litt nothing bot onlie blak, according to the culor of *the Divell*, in quhoes nam we took away the ſtrenth of the rycht culouris that wes in the fatt!

All quhilkis of the premiſſes, ſwa ſpokin and willinglie Confeſt and declairit furth of the mowth of the ſaid *Iſſobell*, in all and be all thingis as is abow ſett downe, I, the ſaid *Johne Innes*, Notar Publict, haw writtine thir prefenttis; and with the ſaidis Witneſſes abow namet, in farder teſtimonie and witneſſing of the premiſſes to be of weritie, We haw ſubſcrywit the ſamen with our handis, day, yeir, and place aboue ſpecifeit.

Joannes Innes, Notarius Publicus.[1]

Mr Hary Forbes, Minister at Auld Earn, Attestis.
A. Brodie, witnes to the said Confetione.
Hew Hay of Newtown, Attestes.
W. Sutherland of Kinsterie, Attestis these Confessionis.
W. Dollas of Cantray, Shereff-deput, Attestis.
Hen. Rose, Minister at Nairne, Attestis the forsaid Declaratione, as to the principal substantials.
George Phinnie, in Kirkmichael, Attestis.
Jo. Weia, in Aulderne, Attestis.

(2.) Issobell Gowdies second Confession.

Att Aulderne, the third day of May, 1662 yeiris, abowt the howris of two or thrie in the efternoone, or therby: In prefence of Master Harie Forbes, &c.[2]

The quhilk day, in prefence of me, Johne Innes, Notar Publict, and Witneſſes, all vnder-ſubſcrywand, the ſaid Issobell Gowdie, profeſſing repentance, &c.[3] Efter that tym ther vold meit bot ſomtymes a Coven, ſomtymes mor, ſomtymes les; bot a Grand Meitting vold be about the end of ilk Quarter. Ther is threttein perſones[4] in ilk Coeven; and ilk on of vs has an Sprit to wait wpon ws, quhan ve pleas to call wpon him. I remember not all the Spritis names; bot thair is on called 'Swein,' quhilk waitis wpon the ſaid Margret Wilſon in Aulderne; he is ſtill[5] clothed in graſs-grein; and the ſaid Margret Wilſon hes an niknam called, 'Pikle neirest the wind.' The nixt Sprit is called 'Rorie,' who waitis wpon Beſſie Wilſone, in Aulderne; he is ſtill clothed in yallow; and hir nikname is 'Throw the corne yaird,' [. . . . . .].[6] The third Sprit is called 'The Roring lyon,' who waitis wpon Iſſobell Nicoll, in Lochlow; and [he is ſtill clothed] in ſea-grein; her niknam is 'Bessie Rule.' The fowrth Sprit is called 'Mak Hector,' qwho [waitis wpon Jean] Martein, dawghter to the ſaid Marget Wilſon; he is a yowng-lyk Devill, clothed ſtill in graſs-[green. Jean Martein is] Maiden to the Coven that I am of; and hir nikname is 'Over the Dyke with it,' becaws the Divill [alwayis takis the] Maiden in his hand nix him, quhan ve daunce Gillatrypes;[7] and quhan he vold lowp from . . . . . he and ſhe will ſay, 'Ower the dyk with it!' The nam of the fyft Sprit is 'Robert the [Rule,' and he is ſtill clothed in] ſadd-dun, and ſeimis to be a Comander of the reſt of the Spritis; and he waittis wpon Margret Brodie, in Aulderne. [The name of the ſaxt Spirit] is called 'Theiff of Hell wait wpon hir selfe;' and he waitis alſo on the ſaid Beſſie Wilſon. The name of the ſevinth [Sprit is called] 'The Read Reiver;' and he is my owin Spirit, that waittis on my ſelfe, and is ſtill clothed in blak. The aucht Spirit [is called] 'Robert the Jackis,' ſtill clothed in dune, and ſeimes to be aiged. He is ane glaiked gowked Spirit! The woman's [nikname] that he waitis on, is 'Able and stowt!'[8] The nynth Spirit is called 'Laing;' and the woman's nikname that he vaitis wpon is 'Bessie Bauld.'[9] The tenth Spirit is named 'Thomas a Fearie,' &c.[10]—Ther wilbe many vther Divellis, waiting wpon [our] Maister Divell; bot he is bigger and mor awfull than the reſt of the Divellis, and they all reverence him. I will ken them all, on by on, from vtheris, quhan they appeir lyk a man.

[1] His Latin *docquet*, with his motto, '*Amor meus cruci fixus*. 1661,' are affixed. It is unnecessary to preserve this, as it is in common form. [2] As in preceding Deposition. [3] The same preamble is repeated, with the account of her baptism and carnal dealing, &c., in similar terms as in her preceding Confession. [4] 'The Deil's dozen. [5] Ever; always. [6] This paper is unluckily very much mutilated at the ends of the lines; which mutilation commences here. Where the sense can be made out, the words are conjecturally supplied, within brackets; if not, a small blank is left in this transcript. [7] Probably a dance then popular among the vulgar. [8] Viz. Bessie Hay. [9] Viz. Elspet Nishie. [10] Issobell, as usual, appears to have been stopped short here by her interrogators, when she touched on such matters.

Quhen we reafe the wind, we tak a rag of cloth, and weitts[1] it in water; and we tak a beetle[2] and knokis the rage[3] on a ftone, and we fay thryfe ower,

'I KNOK this ragg wpon this ftane,
To raife the wind, in THE DIVELLIS name;
It fall not lye[4] vntill I pleafe againe!'

[Whan] we wold lay the wind, we dry the ragg, and fay (thryfe ower,)

'WE lay the wind in THE DIVELLIS name,
[It fall not] ryfe quhill we (or I) lyk to reafe it again!'

And if the wind will not lye inftantlie [after we fay this,] we call wpon owr Spirit, and fay to him,

'THIEFFE! THIEFFE! conjure the wind, and caws it to [lye . . . . . .].'

We haw no power of rain, bot ve will reafe the wind quhan ve pleas.—He maid vs beliew [. . . . . .] that ther wes no GOD befyd him.

As for Elf-arrow-heidis, THE DIVELL fhapes them with his awin hand, [and fyne deliueris thame] to Elf-boyes, who whyttis and dightis[5] them with a fharp thing lyk a paking neidle; bot [quhan I wes in Elf-land?] I faw them whytting and dighting them. Quhan I wes in the Elfes howffis, they will haw werie . . . . . them whytting and dighting; and THE DIVELL giwes them to ws, each of ws fo many, quhen . . . . . Thes that dightis thaim ar litle ones, hollow, and bofs-baked![6] They fpeak gowftie[7] lyk. Quhen THE DIVELL giwes them to ws, he fayes,

'SHOOT thes in my name,
And they fall not goe heall hame!'

And quhan ve fhoot thefe arrowes (we fay)—

'I SHOOT yon[8] man in THE DIVELLIS name,
He fall nott win heall hame!
And this falbe alfwa trw;
Thair fall not be an bitt of him on lieiw!'[9]

We haw no bow to fhoot with, but fpang[10] them from of the naillis of our thowmbes. Som tymes we will miffe; bot if thay twitch,[11] be it beaft, or man, or woman, it will kill, tho' they haid an jack[12] wpon them. Qwhen we goe in the fhape of an haire, we fay thryfe owr:

'I SALL goe intill ane haire,
With forrow, and fych, and meikle caire;
And I fall goe in THE DIVELLIS nam,
Ay whill I com hom [againe!]'

And inftantlie we ftart in an hair. And when we wold be owt of that fhape, we vill fay:

'HAIRE, [haire, God fend thé caire!]
I am in an hairis liknes juft now,
Bot I falbe in a womanis liknes ewin [now.]'

When we vold goe in the liknes of an cat, we fay thryfe ower,

'I SALL goe [in till ane catt,]
[With forrow, and fych, and a blak]fhot!
And I fall goe in THE DIVELLIS nam,
Ay quhill I com hom again!'

[1] Wet. [2] A piece of flatted wood, somewhat resembling a cricket-bat, which washerwomen use for knocking clothes, in cleansing them. [3] Rag. [4] Be allayed. [5] Shapes and trims them as a carpenter, with edged-tools. [6] Boss also signifies hollow, or empty. Perhaps this expresses that these Elves were diminutive and *hump-backed* creatures resembling the *trows* or *trolls* of FAIRY SUPERSTITION; whose propensities are uniformly described as being malignant, and hostile to mankind. [7] Roughly; crossly; gruffly. [8] Yonder. The preceding and following rhymes are probably *unique*, even in the history of Trials for WITCHCRAFT, and show, in a very forcible manner, the criminality of the bigoted, though learned and well-intentioned, individuals who dragged forward such wretches to public trial and an ignominious death. [9] On life; *alive*. [10] Jerk. [11] Touch. [12] A coat of mail; defensive armour.

And if ve [wold goe in ane craw, then] we ſay thryſe ower:

'I SALL goe intill a craw,
With ſorrow, and ſych, and a blak [thraw!
And I ſall goe in the Divellis nam,]
Ay quhill I com home again!'

And quhen ve vold be owt of thes ſhapes, we ſay:

'CATT, catt, (or craw, craw,) [God] ſend thé a blak ſhott! (or blak thraw!)
I wes a catt (or craw) juſt now,
Bot I ſalbe [in a woman's liknes evin now.]
Catt, catt, (or craw, craw,) God ſend the a blak ſhot! (or a blak thraw!)

Giff we, in the [ſhape of an catt, an craw, an] haire, or ony vther liknes, &c., go to any of our neightbouris howſſis, being Witches, we will [ſay,]

['I (or we) CONJURE] thé Goe with ws (or me)!'

And preſentlie they becom as we ar, either cats, hearis, crowes, &c., and goe [with ws whither we wold. Quhan] we wold ryd,[1] we tak windle-ſtrawes, or been-ſtakes,[2] and put them betwixt owr foot,[3] and ſay thryſe,

'[HORSE] and hattok, horſe and goe,
Horſe and pellattis, ho! ho!'[4]

And immediatlie we flie away whair [euir we wold]; and leaſt our huſbandis ſould miſs vs owt of owr beddis, we put in a booſom, or a thrie [leggit ſtoole beſyde thame,] and ſay thryſe ower,

'I LAY down this booſom (or ſtooll,) In THE DIVELLIS name,
Let it not ſteir . . . . . [Quhill I] com again!'

And immediatlie it ſeimis a voman, beſyd owr huſbandis.

Ve can not turn in the lik[nes[5] of . . . . . .] Quhen my huſband ſold beeff, I vſed to put a ſwellowes feather in the hyd of the beaſt, and [ſay thryſe,]

'[I] PUTT owt this beeff in THE DIVELLIS nam,
That meikle ſilver and good pryce com hame!'

I did ewin ſo [quheneuir I putt] furth either horſe, noat,[6] vebs,[7] or any vther thing to be ſold, and ſtill[8] put in this feather, and ſaid the [ſamin wordis thryſe] ower, to caws the comodities ſell weill, &c. . . . . thryſe ower,

OWR Lord to hunting he [is gone]
. . . . . marble ſtone,
He ſent vord to Saint Knitt . . . . . .[9]

[Quhan we vold heall ony for, or brokin limb, we ſay thryſe ower,]

. . . . . .
. . . . . .
He pat the blood to the blood, Till all vp ſtood;
The lith to the lith, Till all took with;
Owr Ladie charmed hir deirlie Sone, With hir tooth and hir townge,
And hir ten fingeris——
In the name of THE FATHER, THE SON, and THE HALIE GAIST![10]

[1] Ride. [2] Bean-ſtalks. [3] For *feet*. [4] See Note to '*Horse and hattock*,' p. 604. [5] There is a tradition in MORAYSHIRE, that Witches could not appear in the shape of a dove or a lamb; the one being emblematical of THE HOLY SPIRIT, the other being the emblem of the AGNUS DEI. Perhaps the *hiatus* might not improperly have been so supplied. [6] *Nolt*, cattle. [7] Webs of cloth. [8] Uniformly; constantly; always. [9] After this fragment, a considerable portion of the MS. is unfortunately torn off. It is probable that the two first lines of the next Charm are mutilated. [10] It has been often remarked by the Editor, in the course of the numerous WITCH TRIALS which occur in this Collection, that a great proportion of the charms, in use to be repeated by these unhappy women, were actually paraphrases of portions of *the Mass-Book*—and in some cases, such as in the Case of ANNIE SAMSON, there appears to have been used doggrel versions of THE CREED, &c.! Others were taken from ancient popular rhymes and songs, such as the above fragment, '*Our Lord to hunting he is gone*,' &c., which, unfortunately, is mutilated.

And this we ſay thryſe over, ſtraiking[1] the for, and it becomes heall. 2dli, For the BEAN-SHAW,[2] or pain in the heance,[3]—'WEE ar heir thrie *Maidens* charming for the bean-ſtraw; þe man of the Midle-earth, blew beaver, land-feaver, maneris of ſtooris, the Lord fleigged[4] the Feind with his holy candles and yeird foot ſtone!—Thair ſhe ſittis, and heir ſhe is gon!—Let hir nevir com heir again!'—3dli, For THE FEAVERIS, we ſay thriſe over, 'I FORBID the qwaking-feavers, the ſea-feaveris, the land-feaveris, and all the feaveris that ewir God ordained, owt of the head, owt of the heart, owt of the bak, owt of the ſydis, owt of the kneyis, owt of the thieghes, fra the pointis of the fingeris to the nebes[5] of the toes; owt fall the feaveris goe, [ſom] to the hill, ſom to the hap, ſom to the ſtone, ſome to the ſtok. In Saint Peiteris nam, Saint Paullis nam, and all the Saintis of Hevin: In the nam of THE FATHER, THE SONE, and of THE HALIE GOST!'[6]—AND when we took the frwit of the fiſhes from [the] fiſheris, we went to the ſhore, befor the boat wold com to it; and we wold ſay, on the ſhore-ſyd, thrie feuerall tymes ower,

'THE fiſheris ar gon to the ſea,
And they vill bring hom fiſhe to me;
They will bring them hom intill the boat,
Bot they ſall get of thaim bot the ſmaller fort!'

So we either ſteall a fiſh, or buy a fiſh, or get a fiſh from them [for nowght,] an or ma.[7] And with that we haw all the fruit of the heall[8] fiſhes in the boat; and the fiſhes that the fiſhermen tham ſelnes will haw, will be bot froath, &c.

The firſt woyag that ewer I went with the reſt of owr COVENS wes [to] Plewghlandis; and thair we ſhot an man betuixt the plewgh-ſtiltis, and he preſentlie fell to the ground, wpon his neiſe[9] and his mowth; and than THE DIVELL gaw me an arrow, and cawſed me ſhoot an voman in that feildis; quhilk I did, and ſhe fell down dead.[10] In Winter 1660, quhen Mr Harie Forbes, Miniſter at Aulderne, wes ſeik, we maid an bagg of the gallis, fleſh, and guttis of toadis, pickles of bear,[11] pairingis of the naillis of fingeris and toes, the liewer of ane hair, and bittis of clowtis. We ſteipit this all together, all night among watter, all haked[12] throw vther. And whan we did put it among the water, SATAN wes with ws, and learned ws the wordis following, to ſay thryſe ower. They ar thus,

'HE is lying in his bed,—he is lyeing ſeik and fair;
Let him lye intill his bed two monethis and [thrie] dayes mair!
2li, Let him lye intill his bed,—let him lye intill it ſeik and ſore;
Let him lyne untill his bed monthis two [and] thrie dayes mor!
3li, He fall lye intill his bed, he fall lye in it ſeik and ſore;
He fall lye intill his bed [two monethis and] thrie dayes mor!'

Quhan we haid learned all thes wordis from THE DIVELL, as ſaid is, we fell all down [wpon owr] kneis, with owr hear down ower owr ſhowlderis and eyes, and owr handis lifted wp, and owr eyes

[1] Stroking; gently rubbing. [2] The *boneshave* or *boneshow*, ſignifies the SCIATICA. From an amuſing, published ſpecimen of THE EXMOOR DIALECT, Devonſhire, it appears, that the term is alſo known in England. The peaſantry of that diſtrict uſe a ſingular *Charm* for its cure. 'The patient muſt lie upon his back, on the bank of the river or brook of water, with a ſtraight ſtaff by his ſide, between him and the water; and muſt have the following words repeated over him, viz.

"Boneſhave right—Boneſhave ſtraight—
As the water runs by the ſtave—Good for Boneſhave!"

They are not to be perſuaded but that this ridiculous form of words ſeldom fails to give them a perfect cure.' *Exmoor Scolding*. P. 8. *Note*. [3] Haunch. [4] Affrighted; terrified. [5] Nibs; extremities. [6] It appears very ſingular to us who live in the Nineteenth Century, that SATAN ſhould have taught his ſervants to invoke THE SAINTS, and even THE HOLY TRINITY. The charms recited by his diſciples are uſually fragments of ancient Monkiſh rhymes; and moſt of them were ſuch as many good Roman Catholics of the lower orders, even in theſe times, would not ſcruple to uſe, for the ſuppoſed cure of their bodily ailments. [7] One or more. [8] Whole. [9] Noſe. [10] Isobell previouſly explained, that theſe poaching excurſions took place, when the Witches were careering in mid-air, mounted on windle-ſtraws and bean-ſtalks, &c. The DEVIL uſually made them pick up ſuch of the Elf-arrows as fell ſhort of or miſſed their mark. [11] Grains of barley, or *bear*. [12] Hacked; minced into ſmall pieces.

[ſtedfaſtlie fixed wpon] THE DIVELL; and ſaid the forſaidis wordis thryſe ower to THE DIVELL, ſtriktlie, againſt Maiſter Harie Forbes [his recowering from the ſaid ſeiknes.] In the night tym we cam in to Mr Harie Forbes chalmer, quhair he lay, with owr handis all ſmeared [. . . . . out] of the bagg to ſwing it wpon Mr Harie, quhair he wes ſeik in his bed; and in the day tyme [. . . . . ane of owr] nwmber, quho wes moſt familiar and intimat with him, to wring or ſwing the bagg [wpon the ſaid Mr Harie, as we could] not prevaill in the night tym againſt him; quhilk wes accordinglie done. Any of [. . . . .] comes in to your howſſes, or ar ſet to doo yow evill, they will look vncowth lyk, thrawn [. . . . .] hurlie lyk, and thair clothes ſtanding owt. The Maiden of owr Coven, Jean Mairten, wes [. . . . . We] doe no great mater without owr Maiden.

And if a child be forſpoken,[1] we tak the cradle [. . . . .] throw it thryſe,[2] and than a dowg[3] throw it; and then ſhakis the belt abow the fyre [. . . . . and then caſt it] downe on the ground, till a dowg or catt goe ower it, that the ſeiknes may com [. . . . . wpon the dowg or] catt.

ALL quhilkis wer ſwa ſpokin furth of the mouth of the ſaid ISSOBELL GOWDIE, &c.[4]

[Indorſed] ED^R, 10 July, 1662. Conſidered and found relevant be THE JUSTICE DEPUTE.

'Tak cair of this peaper. See the Juſtice deputis judgement of it. Show this to the Commiſſioneris.'

HAVEING read and conſidered THE CONFESSIONS of ISOBEL GOWDIE, within contened, as particularlie SATHAN, Renunciation of Baptiſm, with diverſe malefices, I find that a Commiſſion may be verie juſtlie paſs, for hir laſt Tryall. (Sic ſubſcribiter) A. COLUILLE, (Juſtice-depute.)

(3.) ISSOBELL GOWDIES THIRD CONFESSION.

AT AULDERNE, the fyftein day of May, 1662 yeiris, IN preſence of Maſter HARIE FORBES, Miniſter of the Goſpell at Aulderne, Mr HEW ROSSE, Miniſter at Nairn; JOHNE INNES of Edingeith; HEW HAY of Newtoun; Mr ALEX DUNBAR, Schoolmaſter and Seſſion Clerk of Aulderne; GEORGE PHINNEY, in Kirkmichaell; and Johne Weir, and Androw Eaſie in Aulderne; and many vtheris, WITNESSIS to THE CONFESSION efter ſett down, ſpoken furth of the mouth of ISSOBELL GOWDIE, ſpous to Johne Gilbert in Lochloy.

THE quhilk day, in preſence of me, JOHNE INNES, Notar Publict, and Witneſſes all vnder ſubſcrywand, the ſaid ISSOBELL GOWDIE, appeiring to be moſt penetent for hir abominable ſinnes of Witchcraft, moſt ingenwoſlie procedit in hir CONFESSION therof, in maner efter following; to witt. Firſt, as I wes goeing betwixt the townis of *Drumdewin* and *the Headis*, THE DIVELL met with me, and thair I covenanted with him, and promeiſit to meit him, in the night tym, in *the Kirk of Aulderne;* quhilk I did. He ſtood in the Readeris daſk, and an blak book in his hand; quhair I cam befor him, and renuncet JESUS CHRIST and my baptiſme; and all betuixt the ſoale of my foot and the croun of my head, I gaw frielie wp and ower to THE DIVELL. *Margaret Brodie,* in Aulderne, held me wp to THE DIVELL, wntill he re-baptiſed me, and marked me in the ſhoulder, and with his mouth ſucked out my blood at that place, and ſpowted it in his hand, and ſprinkling it wpon my head and face, he ſaid, 'I baptiſe ye, JANET, to my ſelff, in my own nam!' Within a whyll therefter we all removed. And within few dayes he cam to me, in *the New Wardis of Inſhoch,* and ther haid carnall cowpulatioun with me. He wes a werie meikle blak roch man. He will lye als hewie wpon ws, quhan he hes carnall dealling with ws, lyk an malt-ſecke. His memberis ar exceiding great and long; no mans memberis ar ſo long and bigg as they ar. He wold be amongſt ws lyk a weath horſe amongſt mears. He wold lye with ws in preſence of all the multitud; neither haid we nor he any kynd of ſhame; bot

[1] Bewitched. [2] This seems to allude to passing the child, &c., through an enchanted hoop, ring, or belt, a very common popular *charm* in those days. [3] Dog. [4] The same form and subscriptions as in the preceding Confession, with the Notarial Attestation, &c. of JOHN INNES.

eſpeciallie *he* hes no ſhame with him at all. He wold lye and hawe carnall dealling with all, at euerie tym, as he pleaſed. He wold haw carnall dealling with ws in the ſhape of a deir or any vther ſhap that he wold be in. We wold never refuſe him. He wold com to my hows-top in the ſhape of a crow, or lyk a deir, or in any vther ſhap, now and then. I wold ken his woice, at the firſt heiring of it, and wold goe furth to him and haw carnall cowpulatioun with him. The youngeſt and lwſtieſt women will haw werie great pleaſour in their carnall cowpulatioun with him, yea much mor than with their awin huſbandis; and they will haw a exceiding great deſir of it with him, als much as he can haw to them, and mor; and never think ſhame of it. He is abler for ws that way than any man can be (Alace! that I ſould compair him to ane man!) onlie he ves heavie lyk a malt-ſeck; a hudg nature, verie cold, as yce.

He wold ſend me now and then to *Aulderne* ſom earandis to my neightbouris, in the ſhape of ane hair. I wes on morning, abowt the break of day, going to *Aulderne* in the ſhap of ane hair, and *Patrik Papleyis* ſerwandis, in *Kilhill*, being goeing to ther labouring, his houndis being with them, ran efter me, being in the ſhape of an haire. I ran werie long, bot wes forcet, being wearie, at laſt to take my own hous. The dore being left open, I ran in behind an chiſt, and the houndis followed in; bot they went to the vther ſyd of the chiſt; and I was forcet to run furth agane, and wan into an vther hows, and thair took leaſour to ſay,

'HAIR, hair, God ſend thé cair!
I am in a hearis liknes now,
Bot I ſall be an voman ewin now!
Hair, hair, God ſend thé cair!'

And ſo I returned to my owin ſhap, as I am at this inſtant, again. The dowgis will ſom tymes get ſom byttis[1] of vs, quhan ve ar in hairis,[2] bot will not get ws killed. Quhan ve turn owt of a hairis liknes to owr awin ſhap, we will haw the byttis, and rywis, and ſcrattis[3] in owr bodies. Quhan we vold be in the ſhap of cattis, we did nothing but cry and wraw,[4] and rywing, and as it ver, wirrieing on an vther; and quhan ve com to owr awin ſhapes again, ve will find the ſcrattis and rywes on our ſkins, werie ſor. Quhan on of vs or mor ar in the ſhap of catis, and meitt with ony vtheris owr neightbouris, we will ſay,

'DIVELL SPEID THÉ—GOE THOW WITH ME!'

And immediatlie they will turne in the ſhape of an catt, and goe with ws. Quhen we wilbe in the ſhap of crowes, we will be larger than ordinar crowes, and will ſitt wpon brenches of treis. We went in the ſhape of rewkis[5] to *Mr Robert Donaldſones* hows, THE DIVELL, and *Johne Taylor*, and his wyff, went in at the kitchen chimney, and went down wpon the crowk.[6] It wes about *Lambes*,[7] in anno 1659; they opened an vindow, and (we) went all in to the hows, and gott beiffe and drink thair; bot did no more harme.—We went in to *the Downie-hillis*; the hill opened, and we cam to an fair and lairge braw rowme, in the day tym. Thair ar great bullis rowtting and ſkoylling ther, at the entrie, quhilk feared me.[8]

Bot that quhich troubles my conſcience moſt, is the killing of ſeverall perſones, with the arrowes quhich I gott from THE DIVELL. The firſt woman that I killed wes at *the Plewgh-landis*; alſo I killed an[9] in the Eaſt of *Murrey*, at *Candlmas*[10] laſt. At that tyme *Beſſie Wilſon*, in Alderne, killed on thair; and *Margaret Wilſon*, ther, killed an vther; I killed alſo *James Dick* in Canniecavill: Bot the death that I am moſt of all ſorrie for, is the killing of *William Bower*, in *the Miltowne of Moynes*; *Margaret Brodie* killed an voman, waſhing, at *the Burne of Tarres*; *Beſſie Wilſone* killed an man at *the Buſhe of Strutheris*; *Beſſie Hay* in Aulderne killed an prettie man called *Dunbar*, at the Eiſt

[1] Bites. [2] In the shape of hares. [3] Tears and scratches. [4] *Caterwaul*, like cats. [5] Rooks. [6] The *crook*, on which the 'kail-pot' hangs, over the fire. [7] *Lammas*, the 1st day of August. [8] Alarmed, frightened me. See her CONFESSION, Apr. 13, 1662, page 604. [9] *Ane*; one. [10] The purification of the blessed Virgin Mary, Feb. 2d.

end of *the Towne of Forres*, as he wes coming owt at an gaitt; *Margaret Brodie* in Aulderne killed on *David Blak*, in Darnvay. *Janet Breadhead*, ſpows to *Johne Taylor*, told me, a litle befor ſhe wes apprehendit, that *Margaret Wilſone* in Aulderne ſhot *Alexander Hucheon*, in Aulderne; *Janet Breadheid* ſhot *Johne Falconer*, in the Park. The moſt of ws all wer ther, at that tyme. *Beſſie Wilſone* killed on *William Man*, at Burgie; *Margaret Wilſone* killed on *Johne Lee*, and *Janet Breadheid* killed a ſuyn[1] at Burgie; *Beſſie Wilſone* in Aulderne, on an firſt Monday of the Reath, took a bagg maid of hairis lieweris,[2] the fleſh, guttis and gallis of toadis, naillis of fingeris and toes, and ſwinged it on an young man called *Thomas Reid*, and he died. *Beſſie* and *Margaret Wilſones* in Aulderne, *Johne Taylor* and his wyff, *Margrat Brodie* and I, and THE DIVELL, wer together, and *Mr Harie Forbes*, Miniſter at Aulderne, goeing to *Moynes*. THE DIVELL gaw *Margret Brodie* an arrow to ſhoot at him, quhilk ſhe did; bot it cam ſhort; and *the Divell* cawſed tak it wp again. We deſiret to ſhoot again, bot *the Divell* ſaid, 'No; we wold not gett his lyff at that tyme!' *The Divell* cawſed me to ſhoot at *the Laird of Park*,[3] as he was croceing *the Burne of the Boath*; bot I miſſed him.

We wold goe to ſeuerall howſſis, in the night tym. We wer at *Candlmas* last in *Graingehill*,[4] quhair we got meat and drink anewgh. THE DIVELL sat at the heid of the table, and all the COVEN abowt. That night he deſirit *Alexander Elder*, in Earlſeat, to ſay the grace befor meat, quhilk he did; and is thus:

'WE eat this meat in THE DIVELLIS nam,
With ſorrow, and ſych,[5] and meikle ſhame;
We ſall deſtroy hows and hald;
Both ſheip and noat in till the fald.
Litle good ſall come to the fore
Of all the reſt of the litle ſtore!'

And than ve began to eatt. And quhan ve haid endit eatting, we looked ſteadfaſtlie to THE DIVELL, and bowing owrſelwes to him, we ſaid to *the Divell*,

'WE thank thé owr Lord for this!' &c.

The wordis which we ſpak, quhan we maid the pictur, for diſtroyeing of *the Laird of Parkis* meall-children, wer thus:

'IN THE DIVELLIS nam, we powr in this water among this mowld (meall,)[7]
For lang duyning and ill heall;
We putt it into the fyre,
That it mey be brunt both ſtik and ſtowre.
It ſalbe brunt, with owr will,
As any ſtikle[8] wpon a kill.'

THE DIVELL taught ws the wordis; and quhan ve haid learned them, we all fell downe wpon owr bare kneyis, and owr hair abowt owr eyes, and owr handis lifted wp, looking ſteadfaſt wpon THE DIVELL, ſtill ſaying the wordis thryſe ower, till it wes maid. And then, in THE DIVELLIS nam, we did put it in, in the midſt of the fyre. Efter it had ſkrukned[9] a litle befor the fyre, and quhan it ves read lyk a coale, we took it owt in THE DIVELLIS nam. Till it be broken, it will be the deathe of all the meall children that *the Laird of Park* will ewer get. Caſt it ower an Kirk, it will not brak quhill[10] it be broken with an aix, or ſom ſuch lyk thing, be a man's handis. If it be not broken, it will laſt an hundreth yeir. It hes ane cradle about it of clay, to preſerue it from ſkaith;[11] and it wes roſten each vther day, at the fyr; ſom tymes on pairt of it, ſom tymes an vther pairt of it; it vold be a litle wat with water, and then roſten. The bairn vold be brunt and roſten, ewin as it ves by ws. It vanted

[1] Sow. [2] Hares' livers. [3] John Hay of Park. [4] Belonged to Brodie of Lethin. [5] Sighing; lamentation. [6] The rest was probably omitted in writing down the Confession, as being blasphemous. [7] It is writtin *meall* in the other Confession; and the metre (such as it is) requires this liberty. *Mowld* signifies 'earth' or 'dust.' [8] Stubble. [9] Parched; shrivelled. [10] Until. [11] Harm; injury.

no mark of all the pairtis of an child, little lippis, &c., and the handis of it folded downe by its fydis. *Johne Taylor* and *Janet Breadheid* his wyff, *Beffie* and *Margret Wilfones* in Aulderne, and I my felfe, with THE DIVELL, wer onlie at the making of it; bot all the multitud of all owr COEVENS got notice of it, at the nixt meitting; for all owr actis and deidis, betnixt grett Meittingis, moft be geven accompt of, and notted[1] in his book at each Grand Meitting—bot all my owin COVEN gott notice of it werie fchortlie. THE DIVELL him felf cam to me, to my awin hows, and bad me meitt him in *Johne Tayloris* hows, to help thaim to mak the faid pictur. All THE COVEN did fflie lyk cattis, keas, hairis, and rewkis, &c. bot *Barbara Ronald,* in Brightmanney, and I, ftill[2] read on an horfe, quhich ve vold mak of a ftraw or beein-ftalk.[3] *Beffie Wilfone* wes ftill in the liknes of a rewk.

Quhan we ar at meat, or in any vther place quhateuir, *the Maiden* of each COVEN fittis abow the reft, nixt THE DIVELL; and fhe ferwis THE DEVILL, for all the old peopill that he cairis not for, and ar veak and wnmeit for him. He will be with hir and ws all lyk a weath-horfe efter mearis; and fomtymes a man, bot werie wilfull[4] in carnall cowpulationn at all tyms; and they ewin fo als wilfull and defirows of him. Som tymis, among owr felwis, we wold be calling him 'BLAK JOHNE,' or the lyk, and he wold ken it, and heir ws weill aneughe; and he ewin then com to ws, and fay, 'I ken weill anewgh what ȝe wer fayeing of me!' And then he vold beat and buffet ws werie for. We wold he beattin if ve wer abfent any tyme, or neglect any thing that wold be appointit to be done. *Alexr Elder,* in Earlfeat, vold be werie oft beattin. He is bot foft,[5] and cowld never defend him felf in the leift, bot greitt and cry, quhan he vold be fcourging him. Bot *Margret Wilfon,* in Aulderne, wold defend hir felf fynlie, and caft wp hir handis to keip[6] the ftroakis off from hir; and *Beffie Wilfone* wuld fpeak cruftie with hir townge, and wold be belling again to him ftowtlie. He wold be beatting and fcurgeing ws all wp and downe with cardis[7] and vther fharp fcurges, like naked gwhaftis; and we wold be ftill cryeing, 'Pittie! pittie! Mercie! mercie, owr Lord!' Bot he wold haw neither pittie nor mercie. Whan he vold be angrie at ws, he wold girne at ws lyk a dowge, as iff he wold fwellow ws wp. Somtym he vold be lyk a ftirk, a bull, a deir, a rae, or a dowg, &c., and haw dealling with ws; and he vold hold wp his taill wntill we wold kiffe his arce. And at each tyme, quhan ve wold meitt with him, we behoowit to ryfe and mak our curtefie; and we wold fay, 'Ȝe ar welcom owr Lord!'—and 'How doe ȝe, my Lord!' &c. Quhan we wold tak the furit[8] (fruit?) away of anie perfones midden or dunghill, we wold fay thus, (when we wold putt haiked flefh of an vnchriftned child, dowgis and fheipis flefh, and pairingis of naillis, &c., all haked throw-vther):—

'WE putt this intill this ham,[9]
In our Lord THE DIVELLIS nam.
The firft handis that handles thé,
Brunt and fcalded fall they be!
We fall diftroy hows and hald,
With the fheip and nout[10] intil the fald,
And litle fal come to the fore
Of all the reft of the litle-ftore!'[11]

We killed an ox, in *Burgie,* about the dawing of the day, and we browght the ox with ws hom to *Aulderne,* and did eat all amongft ws, in an hows of *Aulderne,* and feafted on it.

THE DEVILL wold giw ws the braweft lyk money that ewer wes coyned; within fowr and twantie houris it vold be horfe-muke.[12] Alace! I deferw not to be fitting heir, for I haw done fo manie evill

[1] Noted; recorded. [2] Constantly; always; uniformly. [3] Bean-stalk. [4] Wanton. [5] Uncourageous; simple; unresisting. [6] *Kep;* ward off. [7] Scourges made of *cords*—not 'cairds,' or instruments used in *carding* wool, flax, &c. [8] The Editor never before met with this word; it evidently means strength, spirit, 'fushion,' (Fr. *foison*); that is, the fertilizing power. [9] Hame; home; destination. [10] Nolt; cattle. [11] The last four lines are the same with the conclusion of the WITCH-GRACE, in this Confession, p. 612. [12] Horse-dung. In other Witch cases, money thus procured is usually said to have been turned into '*sclaitt-stanis.*'

deidis, eſpeciallie killing of men, &c. I deſerw to be reivin wpon iron harrowes, and worſe, if it culd be devyſit!

And quhan we tak away the fruit of cornis, at *Lambes*,[1] we tak an wooll-ſheeir, and cuttis or clips onlie thrie ſtakis[2] of it, and plaitis vther thrie rudis togither, and ſayes,

'We cutt this corne in our Lord THE DIVELLIS nam,
And we ſall haw the fruit of it ham!'

And this thryſe ower; and ſo we haw the fruit of that field. Ewin ſo, quhan we tak keall or the lyk, &c. And we lay all vp till *Yewll, Pace,* or Halie dayes; and pairtis it among vs, and feaſtis on that togither.

WPON the quhilkis all and ſundrie of the premiſſes, ſwa ſpokin and willinglie Confeſt be the ſaid *Iſſobell Gowdie*, I, the ſaid *Johne Innes*, Notar publict, haw wretten thir preſentis, and with the Witneſſes abow and vnder namet, haw ſubſcryuit the ſamen with our handis, day, moneth, place, and yeir abow ſett doun.

JOANNES INNES, Notarius Publicus.[3]

MR HARY FORBES, Minister of Auld Earn, Attestis.
HEN. ROSE, Minister at Nairne, Attestis the foirsaid Declaratioun, as to the principal substantials.
HEW HAY of Newtoun, Attestes. JO. WEIR, in Auldearne, Attestis.
GEORGE PHINNIE, in Kirkmichael, Attestis.

(4.) ISSOBELL GOWDIE'S FOURTH CONFESSION.

AT AULDERNE, the tuantie ſevinth day of May, 1662 yeiris. IN preſence of MASTER HARIE FORBES, Miniſter at Aulderne; PATRIK CAMPBELL of Boath; MR ALLEX[3] DUMBAR, Schoolmaſter and Clerk of the Session of Aulderne; GEORGE PHINNEY, in Kirkmichaell; HEW HAY of Newtowne; and JOHNE WEIR, in Aulderne; WITNESSES to THE CONFESSION of ISSOBELL GOWDIE, ſpows to Johne Gilbert, in Lochloy.

THE ſaid day, the ſaid ISSOBELL, profeſſing repentance for hir former ſinnes of Witchcraft, and that ſhe had bein ower long in THE DIVELLIS ſervice; without ony compulſitouris, proceidit in hir CONFESSION, in maner efter following: That is to ſay. I acknowledg, to my great grieff and ſham, that fyftein yeiris ſince I denyed FATHER, SON, and HOLIE GOST, in *the Kirk of Aulderne;* and gaw over my bodie and ſowll to THE DIVELL; he ſtanding in the Readeris Daſk of *Aulderne*, and an blak book in his hand: *Margret Brodie*, in Aulderne, held me wp to THE DIVELL, quhill[4] I did this, and quhill he marked me one the ſhoulder, and ſowked out my blood thairat, and ſpitted it in his hand, and ſprinkled it on my head, and baptiſed me 'JANET,' in his owin nam. Efter that, he had carnall cowpulatioun with me, in *the New Wardis of Inſhoch;* and ſtill thairefter, fra tym to tym, at owr pleaſour.

The names of THE COEVEN ar thes.[5] *Beſſie Wilſone*, in Aulderne; *Janet Burnet*, ther; *Elſpet Niſhie*, ther; *Margret Brodie*, ther; *Margret Vilſone*, ther; *Beſſie Hay*, ther; *Johne Taylor*, in Belmakeith; *Janet Breadhead*, his ſpous; *Barbara Ronald*, *Iſſobell Nicoll*, in Lochloy; my ſelf, with *Jean Mairten*, our MAIDEN; and *Johne Young*, in Mebeſtoun, owr OFFICER. THE NAMES OF OWR DIVELLIS, *that waited upon ws*, ar thes. Firſt, ROBERT, *the Jakis;* SANDERIS, *the Read Reaver;* THOMAS, *the Fearie;* SWEIN, *the roaring Lion;* THIEFFE OF HELL, *Wait wpon hir ſelf;* MAKHECTOUR; ROBERT, *the Rule;* HENDRIE LAING; and RORIE. We wold ken them all, on by

[1] *Lammas*, 1st August; *Festum S. Petri ad Vincula.* [2] Stalks; stems. [3] The long Latin *docquet* and motto, before referred to, are annexed. [4] Until. [5] The principal purpose of this renewed Examination seems to have been to get a more detailed account of the persons composing her COEVEN, &c., besides getting a solemn Confirmation of her former Declarations; so that the rest of that unhappy Society might in due time be brought to Trial and punishment.

on, from vtheris. Som of thaim apeirit in ſadd-dun, ſom in graſſe-grein, ſom in ſea-greio, and ſom in yallow. THE NIK-NAMES that THE DIVELL gaw wnto ws wer, PIKELL NEIREST THE VIND, thia wes *Margret Wilſones* niknam; *Beſſie Wilſones* niknam ves THROW THE CORN-YAIRD; *Elſpet Niſhies* niknam ves BESSIE BALD; *Jean Mairtenis* niknam, quho ves MAIDEN, ia OWER THE DYK WITH IT; *Beſſie Hayes* nikname is ABLE AND STOUT.

I haw ſein the Elf-arrowes maid. The *Divell* dights[1] them, and *the Elf-boyes* quhytes[2] them. We got ewerie on (of) ws ſo many of thaim from *the Divell*, to ſhoot at men.[3] I my ſelf killed on *William Bower*, at Miltoun of Moynes. This griewis me mor than any thing that I ewer did. *Margret Brody* killed an woman, waſhing, at *the Burn of Tarras*. *Beſſie Wilſon* killed an man, at *the Buſh of Strutheris*. *Beſſie Hay* killed on . . . . . *Dunbar*, at the Eaſt end of *the town of Forres*, coming owt at a gait. *Margret Brodie* ſhot at ou *David Blak*. *Morgret Wilſone* killed on *Alex^r Hucheon*, in Auldern. *Janet Breadhead*, now in priſon, killed *Johne Falconer*, in Park. Ther were thrie killed Eaſt the cowntrie, at *Candlmas* laſt: I killed on, *Margret Brodie* on, and *Beſſie Wilſon* on. I ſhot on *James Dik*, in Connicavell; *Margret Brodie* killed on *Wm Crukſhank*; *Margret Vilſon* killed on *Johne Ley*; *Janet Breadhead* killed a ſuyn,[4] alſo ſhe killed an vther man at *Burgie*; and *Beſſie Wilſon* killed on thair, namet *Wm Man*. We killed an ox, and brought it to *Beſſie Hayes* hows, in Aulderne; and we did eat him thair. I ſhot at *the Laird of Park*, as he ves croſſing the Burn[5] of Boath; bot, thankis to God now, that he preſerwit him. *Beſſie Hay* gaw me a great cuffe,[6] becaus I miſſed him.

Margaret Brodie ſhot at *Mr Harie Forbes*, at the Standing-ſtanes, bot ſhe miſſed; and ſpeirit, 'If ſhe ſould ſhoot again?' And the DIVELL ſaid 'Not!—For we wold nocht get his lyf at that tym.' We intentit[7] ſeuerall tymes for him, quhan he ves ſeik. *Beſſie Hay*, *Jean Mairten*, the Maiden, *Beſſie Wilſon*, *Margret Brodie*, *Elſpet Niſhie*, ſpows to *Johne Mathow*, and I myſelf met in *Beſſie Wilſones* hows, and maid an bag againſt him. The bag wes maid of the fleſh, guttis, and gallis of toadis, the liewer of a hear,[8] pikles of corn, and pairingis of naillis of fingeris and toes; we ſteipit all night among water. *The Devell* learned ws to ſay thes wordis following, at the making of the bag:—

'HE is lying in his bed—and he is ſeik and ſair,
Let him ly in till that bedd monthes two and dayes thrie mair!
He ſal ly in till his bed, he ſalbe ſeik and ſair—
He ſall lye in till his bedd monethes two and dayes thrie mair!'

And quhan we haid ſaid thes wordis, we wer all on our kneyis, our hair abowt owr ſhowlderis and eyes, holding wp our handis to THE DIVELL, that it[9] might deſtroy the ſaid *Mr Harie*. It ves intentit that ve, coming in to his chalmer, in the night tym, we ſould ſwing it on him. And becaus we prevailed not at that tym, *Beſſie Hay* vndertook and cam in to his chalmer to wiſit him, being werie intimat with him; and ſhe brought in of the bag in hir handis, full of the oyll thairof, to haw ſwowng and caſten dropis of it on him; bot ther wer ſom vther worthie perſons with him at that tym, by quhich God prevented *Beſſie Hay*, that ſhe got no harm don to him, bot ſwang a litl of it on the clothes of the bed quhair he lay.

Johne Taylor and his wyff, *Beſſie* and *Margret Wilſones*, and I, maid a pictur for *the Laird of Parkis* maill children.[10] *Johnne Taylor* brought hom the clay in his plaid newk; his wyff ſifted it; we powred in vater in a cowg[11] amongſt it, and wrought it for,[12] and maid a pictor of it, lyk a child, als big as a pow. It vanted no mark of the imag of a bairn, eyes, noſe, mouth, litle lippies, and the hands of it folded doun by its ſydis. The vordis that we ſaid, quhan we maid it, ver thes:—

[1] Dresses. [2] Blocks them out. [3] See the CONFESSION of Apr. 13, 1662, where Issobell tells us they were *licensed to sport*, in this manner, when riding on straws through the air; and that they had power to kill all who did not *sanctify* themselves, &c. [4] A sow. [5] On good authority, *Issobell* and her master ought to have known, that the Laird was out of their power while crossing a running stream. [6] A smart slap, or blow. [7] Tried; essayed. [8] A hare's liver. [9] Viz. Their charmed bag. [10] See the former CONFESSIONS. [11] A sort of wooden dish. [12] Sore; extremely.

'WE put this water among this meall,
For long dwyning[1] and ill heall;
We put it in intill the fyr,
To burn them vp both ſtik and ſtour,
That be brunt with our will,
As any ſtikill[2] on an kill!'

THE DIVELL ſitton on an blak kiſt. Ve wer al on our kneyis, and owr hair about our eyes, looking on THE DIVELL ſtedfaſtlie, and owr handis lifted vp to him, ſaying the vordes ower. And by this the bairnis died, &c. All this, with a great many mor terrible thingis, the ſaidis Witneſſes and Notar hard the ſaid *Iſſobell* CONFES, and moſt willinglie and penetently ſpeak furth of hir ovin mouth. IN witnes quhairof, WE haw ſubſcryuit thir preſenttis, with owr handis, day, yeir, and place, abow ſett down.

ITA EST Joannes Innes, Notarius Publicus, in fidem premiſſorum, rogatus et requiſitus, ſubſcribo.

JOANNES INNES, No^rius Publicus.

MR HARY FORBES, Minister of the Gospel, at Old Earn, Attests.
W. SUTHERLAND of Kinsterrie, Attestis. HEW HAY of Newtoune, Attestes.
ALL. DUNBAR, Schoolmaster and Clerk to the Session of Oldearne, Attests.
GEORGE PHINNIE, in Kirkmichel, Attests. JO. WEIR, in Auldearne, Atteasts.

VIII. CONFESSION *of Janet Breadheid, ſpouſe of John Taylor, in Belmakeith.*

AT INSHOCH, the fowrteinth day of Aprill, 1662 yeiris. IN preſence of PATRIK DUNBAR of Benaferrie,[3] Shereff principall of the Shereffdome of Elgin and Forres; HEW HAY of Newtowne; ARCHBALD DUNBAR, in Meikle Penick; ARCHBALD DUNBAR, in Lochloy; WALTER CHALMER, in Balnaferrie; JAMES COWPER, in Inſhoche; JOHNE WEIR, in Aulderne; and ane great multitud of all fortis of vther perſones; WITNESSES to THE CONFESSIONS and DECLARATIOUN efter ſett downe, ſpokin furth of the mowthe of JANET BREADHEID, ſpous to Johne Taylor, in Belmakeith.

THE quhilk day, in preſence of me, JOHNNE INNES, Notar Publict, and Witneſſes abownamet, vnderſubſcryuand, [4][the ſaid] JANET BREADHEID, profeſſing repentance for hir former ſinnes of Witchcraft, and that ſhe haid bein over long in the [ſamin] ſervice; without any preſſuris,[5] proceidit as followis, to witt. FIRST, I knew nothing of Witchcraft wntill I wes mari[et with] my huſband, Johne Taylor; andsit wes he, and Elſpet Niſhie, his mother, that entyſed me to that craft. And the firſt [thing] that we did wes, we maid ſome drowgries,[6] of dowgs fleſh and ſheipis fleſh, againſt Johne Hay, in the Mure; and therby took away his cornes, and killed his horſe, noat,[7] ſheip, and vther guidis;[8] and layed it abowt his hows, to tak away his awin lyffe; and therefter, he ſhortlie died. Onlie my mother-in-law and my huſband did this, to learne me; and this wes my firſt [leſſon] from them, &c.[9] When they gott me to conſent to this craft; firſt, they haid me to the Kirk of Nairne, in the nycht [tyme;] and THE DIVELL wes in the Readeris daſk, and an book in his hand. And at that meitting, Beſſie Wilſone, in Auld[erne;] Margret Wilſone, ſpows to Donald Callam, thair; Margret Brodie, thair; Barbara Friece, ther; Helen Inglis, ſpows to William [. . . . .] thair; Janet Burnet, thair; Elſpet Makbeith, thair; Elſpet Niſhie, ſpows to Johne Mathew, in Aulderne; Mariore Taylor, [ſpous] to Robert Barrie, ther; Beſſie Hay, ther; Archibald Man, ther; Mariorie

[1] Pining; lingering sickness; gradual wasting away. [2] Stubble. [3] The Dunbars of Balnaferry and Westfield were *heritable* SHERIFFS of Murray. [4] A considerable part of this paper having been destroyed by mice, the Editor has supplied the blanks from conjecture, after a careful comparison with other similar Examinations. The words so supplied are put within brackets. [5] Without the application of TORTURE, or other 'legal compulsitouris;' voluntarily. [6] Drugs; enchanted charms. [7] Nolt, cattle. [8] Farm stock; '*bestial.*' [9] A pretty experiment, indeed, for enticing a novice to be initiated!

Man, his daughter, ther; Elſpet Makhomie, relict [of] wmq[ll] Allexander Huchefon, ther; Beſſie Friece, ſpons to Johne Gilbert, ther; Iſſobell Friece, ſpows to Androw Miller, ther; Agnes Torrie, ſpows to William Yowng, ther; Elſpet Chiſolme, ſpons to vmq[ll] . . . . . Makhomie, ther; Allexander Elder, in Earlſeat; Janet Finlay, his ſpows; Elſpet Laird, in Miltoun of Moynes; Johne Robertſon, in Leathin; Griſall Sinklar, his ſpows; Allexander Sheipheard, in Miltoun of Moynes; Janet Man, his ſpous; Mariorie Dunbar, in Brightmanney; . . . . . Kyllie, in Veſter Kinſtray; Allexander Ledy, ther; Elſpet Gilbert, in Leathinbar; Agnes Brodie, in Leathin; Janet Smith, ſpows to Robert Fraſer, in Arry; Beſſy Peterkin, in Torrich; Allexander Bell, in Drumdewin, a charmer; Iſſobel Nicoll, in Lochloy; Beſſie Young, ther; Elſpet Falconer, ſpows to James Inglis, in Penick; Beſſie and Margret Hucheons, ther; Walter Ledy, ther; wer all ther that night. Johne Taylor, my huſband, wes then Officer; bot Johne Yowng, in Mebeſtoune, is now Officer to my COE[VEN.] Quhan I cam firſt ther, THE DIVELL called tham all be thair names, on the book; and my huſband, than [OFFICER,][1] called thame at the dore. And when that was done, Beſſie Wilſon, in Aulderne, ſat down nixt THE DIVELL;[2] [Beſſie] Hay, thair, ſat nixt him, on the vther ſid; Janet Burnet ſat nixt hir; and Elſpet Niſhie, ſpows to the ſaid Johne [Mathew,] ſat nixt Beſſie Wilſon, hir mother. She wes THE MAIDEN to hir motheris Coeven. All the reſt ſat downe [as] they to cam.[3]

The nixt thing, efter quhat wes done that night, THE DIVELL lay with them all abowt. And then . . . . . for me, my huſband preſented me, and he and Margrat Wilſon, in Aulderne, held me vp to THE [DIVELL to] be baptiſed: And efter I haid put my on hand to the ſoallis of my foot, and the vthir hand to the [crown of] my head, and renunced my baptiſme, and all betuixt my two handis to the Divell, the Divell [marked me] in the ſhoulder, and ſuked out my blood with his mowth, at that place; he ſpowted it in his hand, and [ſprinkled it] on my head. He baptiſed me thairvith, in his awin nam, 'CHRISTIAN.' And than immediatlie thairefter, [they all returned] each to ther awin howſſis. Within fyw dayes thairefter, he cam to me to my hows, quhan my huſb[and was furth,] in the morning, at the plewgh, to ſie the mark quhich he gaw me; and he did lye with me in the naked [bed,] and haid carnall cowpulation with me; and gaw me ane piece of money, lyk a teſtain. He was a meikle, roch, blak man, cloven footed, werie cold; and I fand his nature within me als cold as ſpring-well-water. He promeiſit to ſie me again, within eight dayes, quhilk he did, and haid carnall cowpulatioun with me again, and gaw me an vthir piece of money, lyk the firſt; bot they both turned read,[4] and I got nothing for thaim. He cam again within twantie dayes, and ſtill[5] once in the twantie dayes, and lay with me at each tym continually.

[We] met in the place of Darnvay[6] nixt that, and thair we did eat and drink, &c. Efter that, we vold ſtill meit [euerie] ten, twelve, or twantie dayes continwally.

Whan we haid Great Meittingis, Walter Ledy, in Penick, my [huſ]band, and Allexander Elder, nixt to THE DIVELL, wer Ruleris; and quhan ther wold be but fewar, I my ſelf, the deceaſſit Jean Suthirland, Beſſie Hay, Beſſie Wilſone, and Janet Burnet wold rule thaim. The firſt thing that we did, except the taking of meat, wes taking of the cornis of Drumdewan, and [then] pairted that amongſt ws. 2dly, We ſhoat noat[7] in plewghes. 3dly, Agnes Grant, who wes brunt on the . . . . . hill of . . . .,[8] gott hyre from Elſpet Monro, to deſtroy the Lairdis of Park and Lochloy, and thair [poſteritie.] And then I and my huſband, Elſpet Niſhie, and Beſſie and Margret Wilſones, in Aulderne, con[veened] our ſelwes with THE DIVELL, in Elſpet Niſhies hows; and then touk dowgis fleſh, and ſheipis fleſh, and [haked] it werie ſmall with an aix, and ſeithed it an haill fornoon in a pot, among water: And than I took it owt; and THE DIVELL, with his awin hand, did put it in a ſheipis

[1] See *Issobell Gowdie's* CONFESSIONS; where it is stated that this worthy was OFFICER to a *Coven*. [2] She being MAIDEN to the *Coven*. [3] As they happened to come in; promiscuously. [4] Red. [5] Uniformly; constantly. [6] The seat of THE EARLS OF MORAY. See *Issobell Gowdie's* CONFESSIONS. [7] Shot *nolt*, or cattle, in ploughs, with elf-arrows. [8] Left blank, in the original.

bagg, and he ſteiring it ſtill[1] abowt with his handis. We wer wpon our kneyes, owr hair about owr eyes, and owr handis lifted up, and ve looking ſtedfaſtlie wpon THE DIVELL, praying to him, repeatting the vordis quhich he learned vs, that it ſould kill and deſtroy the Lairdis of Park and Lochloy, and thair meall-children and poſteritie. And then we cam to Inſhoch, in the night tym, and ſkatered it wpon, and down, abow, and about the gait, and vther places quhair the Lairdis and thair ſones wold moſt haunt; and then ve, in the lyknes of crowes and rewkis ſtood abow the gait, and in the treis opoſit to the gait. It wes apointed ſo, that if any of them ſould twitch[2] or tramp wpon any of it, als veill as it or any of it to fall on thaim, it ſould ſtrik thaim with byllis,[3] &c. and kill them: Quhilk it did; and they ſhortlie died. We did it to mak that hows airles.[4] It wold wrong non els bot they. And it wes Keathren Sowter, that wes brunt,[5] that [ſhot] William Hay, the laſt Laird of Parkis brother, for[6] on Gilbert Kinley. It wes only that bagg that wes the death of both the laſt Lairdis of Park.

Alſo, four yeir ſince, I and my huſband, Iſſobell Gowdie, ſpows to Johne Gilbert, in Lochloy, and Beſſie and Margret Wilſones, in Aulderne, maid [a pictur] of clay, lyk the Laird of Parkis eldeſt ſone. My huſband brought hom the clay in his plaid [newk. It] ves maid in my hows; and THE DIVELL him ſelf with ws. We brak the clay werie ſmall, lyk meil, [and] ſifted it with a ſiew, and powred in vater amongſt it, with wordis that THE DIVELL learned vs, [in the DI]VELLIS nam. I brought hom the water, in a pig,[7] out of the Rud-wall.[8] We wer all wpon owr [kneyes,] and our hair about owr eyes, and owr handis lifted vp to THE DIVELL, and owr eyes ſtedfaſt looking [vpon him,] praying, and ſaying wordis which he learned ws, thryſe ower, for deſtroyeing of this[9] Lairdis [meall] children, and to mak his hows airles. It wes werie fore wrowght, lyk rye-bowt. It was about the bignes of a feadge or pow. It was juſt maid lyk the bairne; it vanted no mark of any maill child, ſuch as heid, face, eyes, noſe, mowth, lippes, &c., and the handis of it folded downe by its ſydis. It ves putt to the fyre, firſt till it ſcrukned,[10] and than a cleir fyre about it, till it ves hard. And then we took it owt of the fyre, in THE DIVELLIS nam; and we laid a clowt abowt it, and did lay [it] vp on a knag, and ſometimes vnder a chiſt. Each day we vold water it, and then roſt and bek[11] it; and turn it at the fyre each other day, whill[12] that bairne died; and then layed it vp, and ſteired[13] it not wntill the nixt bairne wes borne: And then, within half an yeir efter that bairn wes borne, [we] took it owt again out of the cradle and clowt, and vold dip it now and than among water, and beck [it] and roſt it at the fyre, each other day once, as ve did againſt the vther that ves dead, wntill that bairn [died] alſo. ALL quhilkis of the premiſſes, ſwa ſpokin and willinglie Confeſſit and declarit furth of the mouth of the ſaid JANET BRED[HEID,] in all and be all thingis as is abow ſett downe, I, the ſaid JOHNE INNES, Notar Publict, haw writtine thir preſentis, and with THE WITNESSES abownamet, in farder teſtimonie and witneſſing of the premiſſes to be of veritie, We haw ſubſcryuit the ſamen with our handis, [day, month,] yeir, and place abow ſpecifeit.

JOANNES INNES, *Notarius Publicus.*[14]

HEW ROSE, Minister at Nairne, Attestis thir premisses, confessed in my presence, Aprile 15, 1662.
MR HARY FORBES, Minister of the Gospel at Old Earn, Attestis.
ARCHIBALD DUNBAR, witnes, Attestis. W. SUTHERLAND off Kinsterie, Attestis the premisses.
[JOHNE WE]IR, in Aulderne, Attestis; Confessed in my presence, Apryll 15, 1662.
J. COUPER, Attestes. W. CHALMER, witnes to the premisses, confest in my presentis, 15 of Apryll.
HEW HAY Attestes the premisees, Confest 15 Appryll, 1662.[15]

[1] Ever; constantly. [2] Touch. [3] Boils. [4] Heirless. [5] For Witchcraft. [6] At the instigation of. [7] Earthen jug, or jar. [8] The ROOD, or HOLY-CROSS, well. [9] The present Laird's male children. The last two Lairds are stated to have been destroyed by the charmed bag. [10] Got parched, or shrivelled; *shrunk.* [11] Bake. [12] Every alternate day, until that child died. [13] Stirred. [14] The long Latin docquet is annexed. [15] Some farther marking had at one time been on the margin; but only a few of the *letters* at the end of each line now remain. It appears to have been the Judgment of the Justice-depute, from a fragment of a Memorandum on the back of the CONFESSION; so that it is probable she had been tried at one of the 'JUSTICE-AIRS'—and of course would, on her own Confession, be condemned to be burnt.

No. VIII.

Continuation of No. XVIII. of the General Appendix of Documents illustrative of Gowrie's Conspiracy.

(*See* Vol. II. *pp.* 299 *to* 313.)

When the Editor was in the progress of completing his collection of materials for illustrating the truth of the Earl of Gowrie's Conspiracy against King James VI, one of the Volumes of *Sir James Balfour's* MSS. had been misplaced. Since that time, however, the Editor has had the advantage of again inspecting that truly valuable repertory of historical information, and now submits a few more of those highly interesting Papers, which, he is happy to notice, place the conduct of the celebrated *Mr Robert Bruce* in a much more favourable point of view. In justice to the memory of that eminent individual, it has been thought proper to insert them in this Appendix. Throughout the protracted controversy between *Bruce* and the King, the latter, obviously, had the worst of the argument—and tyrannically put down his able but dauntless and pertinacious antagonist by a most unlawful stretch of arbitrary power, after he failed in all his attempts at foiling him with his own weapons.

The relentless persecution of *Bruce* must, assuredly, be accounted an additional blemish in the character of King James VI, by every unprejudiced person. The reader is once more referred to the text, and to the documents and authorities formerly quoted, in reference to this subject.

(18.) Letter, *Mr Robert Bruce to* the King.[1]

Pleas ȝour Maiestie,

Wpon the directione ſend to me by ȝour hienes Consell, I thoucht it meitt be my awin letter to teſtifie my reſolutione to ȝour M. in that mater of Gowrie. ȝour M. can not be ignorant in quhatt termes I paſſit my reſolutioun at *Sanct Jonnestoune*.[2] That reſolutioun is as ȝitt extant, ſubſcrywitt be monie honeſt vitneſſis. To that reſolutioun, both in mater and maner, I adhear; and fra it I am nott myndit to pas, be God his grace. This reſolutioun gaue ȝour M. perfytt contentment than, and I doubt nott bott itt vill do the lyke ȝitt. So luiking that ȝour Maiesteis ſcruple ſalbe fullie ſatiſfied, in that mater, I reſt,

ȝour M. his moſt humble and obedient ſubiect,

To his Maiestie. Robert Bruce.

(19.) Letter, *Mr Robert Bruce to* the Privy Council.[3]

Pleas ȝour honoris,

I receawed ȝour Letteris on Setterday the 13 off this inſtant; and for ſatisfactioune thairoff I haue directed my Letter, conteining my avin[4] reſolutioun in that mater, unto his M. My reſolutioun nov is relatiwe to my reſolutioun att *Sanct Jonstoun*, quhilk vas dyttit[5] by his Maiesteis ſelff, and ſubſcrywet by monie honeſt vitneſſis (beſyd me) quha ar ȝitt liewing. This reſolutioun gawe his M.

[1] From Orig. preserved among the *Denmylne MSS.* Adv. Lib. A. 2. 52. No. 25. It is undated. [2] Perth, having been dedicated to St John as Patron Saint, was long known by this name. [3] From the same Coll. No. 26; also undated. [4] Own. [5] *Endited*, composed.

perfyt contentment then, and I doubt nott bot itt will do the lyk ȝitt; for vnto thatt resolutioun I adhear both in matter and mauer; and I am readdie to testifie the fame, so oft as his M. pleases, by my awin hand wreitt. Sa, luiking tbat ȝour honoris sall not be forder trublit in that mater, I rest,

ȝour honoris to be commandit to his povar, in God,

To HIS M. most honorable PRIUIE CONSELL. ROBERT BRUCE.

(20.) LETTER, *Mr Robert Bruce to* THE KING.

MAY IT PLEIS ȝOUR M.

HEIRING that my cuming to *Aberdeine* was interpret to spring of contempt, I thocht it my bundin dewtie to purg my selfe to þe vttermost thairof, for I compt contempt of GOD and his Lewtennent þe heighest cryme that is; And thairfoir, for purgation, I say, that quhatsoever is done with ane warrand of GOD and man can nocht incur þe suspition of a contempt, lat be ane actuall; and in deid, gif thair had bene ane prescription or limitation of tyme in any Licience, I had failȝeit in passing þe boundis thairof; ȝea nocht onlie that, but I avaittit upon þe proper tyme quharfoir my Licience wes gevin me, and tuik þe benifeit quhen þe necessitie of my infirmitie constranit me; and being moir respectiue than that, I tuik it nocht quhill THE BISCHOP OF MURRAY brocht me þe adwyse of þe BISCHOPPIS OF SANCT ANDROS and GLASCOW to do so: And giff I had resauit þe meineft signification that culd be, that þe imbracing of þe benifit at that tyme wald nocht stand with ȝour HIENESS contentment, I wald most glaidlie haiff abstanit thairfra; for I haif layed my compt, be GODIS grace, never to involue me in that giltines. So, to end, thair is no thing done be me quhairfoir my former benifeit suld be retrenchit; and most huimlie I creave that ȝour M. censure go nocht befoir my procuring, but that my reparing to *Aberdene* for my better helth and confort of my wyff and childrin may stand with ȝour M. fauor. So resting ever,

ȝour M. most humbill subiect and orator,

INDERNES,[1] ye 20 viij of Merche (1606?) ROBERT BRUCE.

To THE KINGIS most excellent MAIESTIE.

(21.) SUPPLICATION, *Mr Robert Bruce to* THE PRIVY COUNCIL.[2]

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humblie menis and schawis I, your seruitour, MR ROBERT BRUCE, Minister, That quhair, the last day when I wes brocht befoir your ll., I wes commandit and ordaneit be ȝour ll. to addresse my selff to the burgh of *Innernes*, and thair to remane and within four myllis abute the fame, dureing his MAIESTEIS will and pleasour; lykeas, the tyme for my addresse thair daylie approtchis; quhairvnto, althoght I acknawledge my selff bundin in conscience befoir GOD and in my alledgeance to THE KINGIS MAIESTIE, my Souerane, to gif all dew obedience, as by GODIS grace I mynd neuir to be dissobedyent to HIS MAIESTIE or your ll., in ony of your ll. directionis, in this kynd; yitt, the indispositioun and inhabilitie of my persone, conioyned with my grite aige, forceis me humblie to schew vnto your ll. how vnable I am to vndertak and to vaderly suche a jornay and charge; ffor I am become so feible and waik,[3] and my aigeit and weyryed[4] persone is so far worne and waisted with greif, cair, and vtheris visitationis quhairwith it hes pleasit THE LORD in his mercye to chastice me, that hardlie dow[5] I travell any quhair, without haisard of my lyff: And yf it sall pleas GOD to visite me with seiknes, outher at *Innernes* or be the way, it is not liklie that I sall ouercome[6] the fame. And tuotching the imputatioun layed vpoun me, whilk wes the caus of HIS MATEIS offence,[7] and of this hard course tane with me, I thank GOD I wes frie and innocent thairof, and I cleirit my selff of the fame in your ll. presence, it being a poynt verrie far fra my professioun to be a movair or steirair[8] vp of Seditioun, as HIS MATIE wes informed of me; and fra my hairt I deteast suche Seditious practizes, as being most impious and wicked, and repugnant to the

[1] Inverness. [2] It is unsigned, and no deliverance indorsed, but it is evidently the original, having the marks of the ribbon usually passed through Letters and bills, &c., when sealed and sent to a distance. [3] Weak. [4] Weary; spent. [5] Am I able to travel. [6] Survive, recover. [7] Displeasure. [8] Stirrer.

Holy Ordinanceis of God, quhairby we are commandit to gif all dew obedyence to our ſuperioris. And as I ſchew vnto your ll., my comeing to this hurgh the tyme of the Parliament wes vpone a meere neceſſitie, and to eſchew the danger of horneing, quhairwith I wes threattned, for xxij merkis. And dureing the ſchorte tyme of my aboade heir, whilk wes not xxxvj houris, I ſpak not with a Parliament man, except *the Lord Kilſayth*,[1] whome I employed to be cautioner for me; and had no kynd of medling with the affairis of the Parliament, becaus thay concerneit me not; bot keipit my ſelff very quyet till my away-going. And dureing the tyme of my Warding in *the Caſtell of Ed*r, my cariage wes ſo modeſt, calme, and peceabill, withoute medling with thir matteris of THE KIRK now in queſtioun, as I hoip nothing can be obiectit vnto me. And yf HIS MATIE wald be grationſlie pleaſit to ſuffer me ſpend the few remanent of my aigeit and weyryſome dayes at my awne houſe, I wilbe verrie glaid and willing to be perpetuallie confynned thair, and tua myllis thairaboute; and I ſall neuir tranſcend that boundis, nor medle with ony matter concerneing the pollicie and governement of THE KIRK. Moſt humblie beſeiking your ll. to haif conſideratioun of this my eſtate; and outher be your ſelffis, or be your interceſſioun at HIS MAIESTEIS handis, to grant me ſome eaſe and releiff in this heavie charge layed vpoune me, whilk wilbe my vtter ouerthrow and wrak. And your ll. anſuer.

(22.) LETTER, *The Archbiſhop of St Andrews*[2] *to* THE KING.

MOST SACRED SOVERANE,

IT may pleaſe 3our moſt excellent MATIE, I haive ſeene 3our MATIES directioun ſent to THE EARLE OF DUNBAR about MR DAVID LYNDSAYE his intemperance in preachinge. I haive tane baldnes to give anſuer and avyſe, in maiſt humble and ſubmiſſe maner. The man vas input[3] be 3our MATIE vpon my raſche and oft repeited ſute. He hes oft done veill aganes the ſeditious, albeit inconſtantlie. The vordes he ſpak, to my gryt greiff, wer to reprehend 3our MATIE for toleratioun and advancinge off PAPISTES, quha ever ſoght 3our MATIES wrak; and this was efter þat I had congratulat to the peipill 3our MATIES lait wonderfull delyverie.[4] Efter Sermon, I couvened *the Bailleis*, and *Counſall*, and ſent þame to him to querrell him for his vnreverent uſage; quhilk wrocht this effect that the daye followinge he preached ane palinod,[5] ſa impudentlie flatteringe to 3our MATIES praiſe, and vilipendinge all the Princes of Europe be name, in 3our MATIES reſpect,[6] that all men eſteimed he vas makand penance for the former dayes inſolence, with ſupererogatioun.

This his foolie[7] is nocht worthie of 3our MATIES wrathe; and as for me, I will nocht give advyſe to honour ſick ane[8] with publict cenſure, at ſic ane tyme. I haive advyſed with 3our MATIES moſt truſtie ſervantis of our ſocietie, quha thinkes meit to tranſport him, but noyce,[9] to a landwart[10] Kirk; and to aſſume to me ane[11] mor vyſe[12] and faſt,[13] quhilk 3our M. ſall ſee accompliſſed, but 3our MATIES empeſchement.[14]

My Lord of Dunbar hes employed him ſelff ſa faythfullie, eafaldlie,[15] and fortunatlie, in this lait ſervice, that I preſume to advyſe 3our MATIE to give him credit in 3our MATIES ſervice, in our gryteſt turne, in this Parliament; for quhatſumever is glanſed to 3our MATIE in the contraire, is aither *panici terrores*, or prevaricatioun.

SIR, I lacke moyen to do quhat I wald in your MATIES ſervice. I heir, daylie, foule vanities quhilkis I think I am called to repreſſe. I want formall rycht and rent. Supplie this, SIR, in this 3our approchinge Court, and than 3e ſall nocht neid to wreit hither; but the puniſched ſall ſeik thither toward 3our MATIE for obteininge pardone. Finallie, 3our MATIES erandis in the credit off *the Earle of Dunbar*, or of ane off lyk diſpoſitioun, is heir poſſibill and eaſie. *Non debet ſub tali tantoque*

[1] Sir William Livingston, one of the Ordinary Lords of Session, who succeeded Sir John Preston, Lord Fentonbarns, Jun. 6, 1609. His son was created Viscount of Kilsyth and Lord Campsie, by patent, Aug. 17, 1661. [2] George Gladstanes, translated from the See of Caithness *anno* 1606, but not consecrated till *anno* 1610. Died May 2, 1615. [3] Inducted, *put in*. [4] From the Earl of Gowrie's Conspiracy. [5] Lat. *palinodium*, recantation after professions of repentance. The term is still used both in the Civil and Ecclesiastical Courts. [6] In comparison to the King. [7] Folly. [8] Such a one. [9] Translate him without bustle or noise. [10] To a country or landward Parish Church. [11] One, viz. another Minister. [12] Wise. [13] Steady, sure. [14] Without hindrance or trouble to your Majesty. [15] Sincerely, without duplicity, (q. d. *one-foldly*,) in contradistinction to *twa-fald*, double, deceitful. The word is now nearly obsolete.

principe precarium esse imperium. This,[1] I humblie recommend ȝour MATIES persoun and estait to GOD his mercifull Providence, I remaine,

Your MATIES maist humble oratour and obedient servant,

EDINBURGHE, nynt of Februar, 1606(-7.)

TO THE KINGIS most excellent MATY. SANCTANDROIS.

No. IX.

BOND *by* JOHN *fifth* EARL OF CASSILLIS, *to his Brother* HEW KENNEDY, *commonly called* THE MASTER OF CASSILLIS, *to pay him and his accomplices* 1200 *merks yearly, &c. to commence from the date of their taking the Life of* THE LAIRD OF AUCHINDRAYNE.

(*See* VOL. III. *pp.* 124, 581, &c.)

[IN the preceding Collection, and also in the 'Historical and Genealogical Account of the principal FAMILIES of the Name of KENNEDY,' recently published,[2] all the incidents then discovered relative to the accumulated acts of villainy perpetrated by THE LAIRD OF AUCHINDRAYNE and his son have already been disclosed. The public being likewise in possession of the leading features of this extraordinary case, from the graphic pen of SIR WALTER SCOTT, who has prefixed an introductory notice to his dramatic poem, 'AUCHINDRAIN, or the Ayrshire Tragedy,' it is altogether unnecessary to attempt even a brief sketch of their lives and crimes in this place.

The Historical Account above referred to, and the present Collection, contain a great variety of Documents which have been brought forward, alike to illustrate the Trials of the Lairds of Auchindrane, and the extraordinary state of society and manners in the important district of Carrick and the adjoining shires. But no Papers which have hitherto been discovered appear to the Editor to afford so striking a picture of the savage state of barbarism into which that country must have been sunk, as the following BOND by the EARL OF CASSILLIS to his brother and heir apparent, Hew Master of Cassillis. The uncle of these young men, Sir Thomas Kennedy of Culzean, TUTOR OF CASSILLIS, as the reader will recollect, was murdered, May 11th, 1602, by Auchindrayne's accomplices.

The MASTER OF CASSILLIS, for many years previous to that event, was in terms of open personal hostility to his brother. During all that period, however, the Master maintained habits of the closest intimacy with Auchindrayne and his dissolute associates, and actually joined him in various hostile enterprises against his brother the Earl.[3] The occurrence of *the Laird of Culzean's Murder* was embraced by their mutual friends as a fitting opportunity to effect a permanent reconciliation between the brothers; "but (as 'the Historie' quaintly informs us) the cuntry thocht that he wald not be eirnist in that cause, for the auld luiff betuix him and Auchindrayne."[4] The unprincipled Earl, (whose *sobriquet*, and that of some of his ancestors, was *King of Carrick*, to denote the boundless sway which he exercised over his own vassals and the inhabitants of that district,) relying on his brother's necessities, held out the infamous bribe contained in the following Bond, to induce his brother, the Master of Cassillis, to murder his former friend, the old Laird of Auchindrayne. Though there be honour among thieves, it would seem that there is none among assassins; for the younger brother insisted upon having the price of blood assured to him by a written document, drawn up in the form of a regular BOND!

Judging by the Earl's former and subsequent history, he probably thought that, in *either* event, his purposes would be attained, by "killing two birds with one stone." On the other hand, however, it is but doing justice to the Master's acuteness, and the experience acquired under his quondam preceptor Auchindrayne, that we should likewise conjecture that, on his part, he would hold firm possession of his BOND, to be used as a checkmate against his brother, should he think fit afterwards to turn his heel upon him, or attempt to betray him into the hands of justice.

The following is a correct copy of the Bond granted by the Earl, as transcribed from the original.]

WE, JOHNE EARLE OF CASSILLIS, Lord Kennedy, &c., Bindis and Obliffis ws, that howfovne our broder HEW KENNEDY of Brounftoun, with his complices, taikis THE LAIRD OF AUCHINDRANEIS lyf, that we fall mak guid and thankfull payment to him and þame of þe fowme of tuelff hundreth merkis, ȝeirlie, togidder with corne to fex horfis, ay and quhill[5] we reffaw[6] þame in houfhold with our felf: Beginning þe firft payment immediatlie after þair committing of þe faid deid. ATTOUR,[7] howfovne we reffaw þame in houfhold, we fall pay to þe twa ferwing gentillmen þe feis, ȝeirlie, as our awin houfhald ferwandis. And heirto we Obliss ws, vpoun our honour. SUBSCRYVIT with our hand, AT MAYBOLE, þe ferd day of September, 1602.

JOHNE ERLE OFF CASSILLIS.

[1] Thus. [2] The Quarto Edition, Edin. 1830. [3] For the confessed purpose of taking his life, in following out their deadly Feud. [4] Historie of the Kennedies, p. 59. [5] Aye and until. [6] Receive. [7] Moreover.

GENERAL INDEX.

GENERAL INDEX

TO CRIMINAL TRIALS, &c.

DURING THE REIGNS OF

KINGS JAMES IV AND V, MARY QUEEN OF SCOTS, AND KING JAMES VI.

*** THE reader, in consulting the following INDEX, is requested to remark, that owing to the Editor's having been under the necessity of sending the TRIALS which occurred during the reign of KING JAMES VI. to press, before the introductory portions of this work were compiled, it became requisite for him to page the earlier reigns in Vol. I. thus, * 1, * 2, &c. In order to avoid the annoyance and trouble of consulting *separate* INDICES of persons and matters, the Editor has bestowed a great deal of time and labour in constructing an extremely copious GENERAL INDEX, which he may venture to say embraces every circumstance contained in the work, which is at all likely to be esteemed interesting and useful to the historian, lawyer, antiquary, or genealogist. The most prominent of the ancient words and phrases, and the leading historical facts, superstitions, &c., have also been incorporated, so as to render the work more acceptable, and also as useful as possible to the public, as a book of reference.

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